Supreme Court, U.S.
FILED

96 1671 APR 18 1997

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

OCTOBER TERM, 1996

FRANKLIN D. RAINES, ET AL., APPELLANTS

v.

ROBERT C. BYRD, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

WALTER DELLINGER
Acting Solicitor General
FRANK W. HUNGER
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
MALCOLM L. STEWART
Assistant to the Solicitor General
DOUGLAS N. LETTER
SCOTT R. MCINTOSH
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

The Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200 (to be codified at 2 U.S.C. 691 *et seq.*), gives the President conditional authority to cancel certain spending and revenue items within five days after a bill containing such items has been enacted into law. The questions presented are as follows:

1. Whether individual Members of Congress have standing to challenge the constitutionality of the Act.

2. Whether the Act violates Article I of the Constitution.

PARTIES TO THE PROCEEDINGS

The appellants here, who were the defendants in the district court, are Franklin D. Raines, the Director of the Office of Management and Budget, and Robert E. Rubin, the Secretary of the Treasury. The appellees here, who were the plaintiffs below, are Senator Robert C. Byrd, Senator Daniel Patrick Moynihan, Senator Carl Levin, former Senator Mark O. Hatfield, Representative David E. Skaggs, and Representative Henry A. Waxman.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Constitutional and statutory provisions involved	2
Statement	3
The questions presented are substantial	12
Conclusion	27
Appendix A	1a
Appendix B	30a
Appendix C	32a

TABLE OF AUTHORITIES

Cases:

Allen v. *Wright*, 468 U.S. 737 (1984)	13, 18
American Power & Light Co. v. *SEC*, 329 U.S. 90 (1946)	21
Bender v. *Williamsport Area Sch. Dist.*, 475 U.S. 534 (1986)	18
Bennett v. *Spear*, No. 95-813 (Mar. 19, 1997)	13
Buckley v. *Valeo*, 424 U.S. 1 (1976)	18
City of Los Angeles v. *Lyons*, 461 U.S. 95 (1983)	14
City of New Haven v. *United States*:	
634 F. Supp. 1449 (D.D.C. 1986), aff'd, 809 F.2d 900 (D.C. Cir. 1987)	4
809 F.2d 900 (D.C. Cir. 1987)	5
FEA v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976)	21
FPC v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944)	21, 23
Field v. *Clark*, 143 U.S. 649 (1892)	21
Flast v. *Cohen*, 392 U.S. 83 (1968)	19
Hunt v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977)	17
INS v. *Chadha*, 462 U.S. 919 (1983)	5, 24, 25
J.W. Hampton, Jr., & Co. v. *United States*, 276 U.S. 394 (1928)	21, 22
Laird v. *Tatum*, 408 U.S. 1 (1972)	18

Cases—Continued: Page

Lichter v. *United States*, 334 U.S. 742 (1948) 21, 23
Lincoln v. *Vigil*, 508 U.S. 182 (1993) 4, 23
Loving v. *United States*, 116 S. Ct. 1737 (1996) 20, 22, 26
Lujan v. *Defenders of Wildlife*, 504 U.S. 555 (1992) 13, 14, 16, 18
Mistretta v. *United States*, 488 U.S. 361 (1989) 20, 21, 22
Moore v. *U.S. House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984), cert. denied, 469 U.S. 1106 (1985) 17, 19
Muskrat v. *United States*, 219 U.S. 346 (1911) 19
NBC v. *United States*, 319 U.S. 190 (1943) 21, 22
National Treasury Employees Union v. *United States*, 101 F.3d 1423 (D.C. Cir. 1996) 7
New York Central Securities Corp. v. *United States*, 287 U.S. 12 (1932) 21, 23
OPM v. *Richmond*, 496 U.S. 414 (1990) 23
Reno v. *Catholic Social Servs., Inc.*, 509 U.S. 43 (1993) 14
Sierra Club v. *Morton*, 405 U.S. 727 (1972) 13
Skinner v. *Mid-America Pipeline Co.*, 490 U.S. 212 (1989) 21
Synar v. *United States*, 626 F. Supp. 1374 (D.D.C.), aff'd *sub nom. Bowsher* v. *Synar*, 478 U.S. 714 (1986) 21
Touby v. *United States*, 500 U.S. 160 (1991) 20, 21
Train v. *City of New York*, 420 U.S. 35 (1975) 4, 16, 21
United States v. *Richardson*, 418 U.S. 166 (1974) .. 16
United States Nat'l Bank of Oregon v. *Independent Ins. Agents of America, Inc.*, 508 U.S. 439 (1993) 15
Whitmore v. *Arkansas*, 495 U.S. 149 (1990) 9, 12, 14
Yakus v. *United States*, 321 U.S. 414 (1944) 21, 23

Constitution and statutes: Page

U.S. Const.:
Art. I 12, 20, 21, 25, 26
§ 7, Cl. 2 (Presentment Clause) 2, 3, 10, 25
§ 9, Cl. 7 23
Art. II, § 3 18
Art. III 10, 12, 15, 17, 18
Act of Sept. 29, 1789, ch. 23, § 1, 1 Stat. 95 3
Act of Feb. 11, 1791, ch. 6, § 1, 1 Stat. 190 3
Act of Mar. 3, 1809, ch. 28, §§ 1-2, 2 Stat. 535-536 4
Act of May 1, 1820, ch. 52, § 5, 3 Stat. 568 4
Act of Aug. 26, 1842, ch. 202, § 23, 5 Stat. 533 4
Act of Feb. 12, 1868, ch. 8, § 2, 15 Stat. 36 4
Act of Sept. 29, 1987, Pub. L. No. 100-119, § 206(a), 101 Stat. 785-786 5
Impoundment Control Act of 1974, Pub. L. No. 93-344, Tit. X, 88 Stat. 332 (codified as amended at 2 U.S.C. 681 *et seq.*) 4
§ 1011(1), 2 U.S.C. 682(1) 4
§ 1011(3), 2 U.S.C. 682(3) 4
§ 1012, 2 U.S.C. 683 (1982) 5
§ 1013, 2 U.S.C. 684 (1982) 5
§ 1021(a), 2 U.S.C. 691(a) 5, 22, 23
§ 1021(a)(A), 2 U.S.C. 691(a)(A) 7, 24
§ 1021(a)(B), 2 U.S.C. 691(a)(B) 7
§ 1021(c), 2 U.S.C. 691(c) 7
§ 1022(b), 2 U.S.C. 691a(b) 24
§ 1023(a), 2 U.S.C. 691b(a) 7
§ 1023(b), 2 U.S.C. 691b(b) 6
§ 1024, 2 U.S.C. 691c 6
§ 1024(a), 2 U.S.C. 691c(a) 6
§ 1024(b), 2 U.S.C. 691c(b) 6
§ 1025, 2 U.S.C. 691d 7
§ 1026(4)(A), 2 U.S.C. 691e(4)(A) 6
§ 1026(4)(B), 2 U.S.C. 691e(4)(B) 6
§ 1026(4)(C), 2 U.S.C. 691e(4)(C) 6
§ 1026(6), 2 U.S.C. 691e(6) 7
§ 1026(7), 2 U.S.C. 691e(7) 6
§ 1026(8), 2 U.S.C. 691e(8) 6
§ 1026(9), 2 U.S.C. 691e(9) 6

Statutes—Continued: Page

Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200 (to be codified at 2 U.S.C. 691 *et seq.*) 2, 3
§ 2, 110 Stat. 1200-1211 (2 U.S.C. 691-691f) 5
§ 3(a)(1), 110 Stat. 1211 (2 U.S.C. 692(a)(1)) 9
§ 3(c), 110 Stat. 1211 (2 U.S.C. 692(c)) 9

Miscellaneous:

89 Cong. Rec. 10,362 (1943) 3
Correspondence of the Justices, *reprinted in* 3 *The Correspondence and Public Papers of John Jay* (H. Johnston ed. 1891) 19
H.R. Conf. Rep. No. 491, 104th Cong., 2d Sess. (1996) 23
H.R. Rep. No. 1797, 81st Cong., 2d Sess. (1950) 3

In the Supreme Court of the United States

OCTOBER TERM, 1996

No.

FRANKLIN D. RAINES, ET AL., APPELLANTS

v.

ROBERT C. BYRD, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App., *infra*, 1a-29a) is not yet reported.

JURISDICTION

The order of the district court was entered on April 10, 1997. A notice of appeal (App., *infra*, 30a-31a) was filed on April 11, 1997. The jurisdiction of this Court is invoked under Pub. L. No. 104-130, § 3(b), 110 Stat. 1211 (App., *infra*, 57a) (to be codified at 2 U.S.C. 692(b)).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Presentment Clause of the United States Constitution, Art. 1, § 7, Cl. 2, provides as follows:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

2. The Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200 (to be codified at 2 U.S.C. 691 *et seq.*), is reproduced at App., *infra*, 32a-59a.

STATEMENT

This case involves a challenge to the constitutionality of the Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200 (to be codified at 2 U.S.C. 691 *et seq.*). Although the authority vested in the President by the Line Item Veto Act has never been exercised, the district court permitted several Members of Congress to proceed with a constitutional challenge to the Act. On the merits, the court concluded that the Act authorizes the President to "repeal" Acts of Congress, in violation of the Presentment Clause, U.S. Const. Art. I, § 7, Cl. 2, and is therefore unconstitutional. Congress has vested this Court with immediate appellate jurisdiction over the district court's decision. App., *infra*, 57a.

1. Beginning in 1789, and continuing into the Nineteenth and Twentieth Centuries, Congress established the basic practice of passing appropriations laws that provide for expenditures "not exceeding" specified amounts. See, *e.g.*, Act of Sept. 29, 1789, ch. 23, § 1, 1 Stat. 95; Act of Feb. 11, 1791, ch. 6, § 1, 1 Stat. 190. By appropriating funds "not exceeding" fixed amounts, Congress left the Executive Branch with discretion to spend less than the appropriated amount if the full measure of the appropriation proved unnecessary. See, *e.g.*, H.R. Rep. No. 1797, 81st Cong., 2d Sess. 9 (1950) ("Appropriation of a given amount for a particular activity constitutes only a ceiling upon the amount which should be expended for that activity."); 89 Cong. Rec. 10,362 (1943) (Sen. Truman) ("When the Congress appropriates funds * * * none of us hold[s] that we give a mandate to expend the funds appropriated."). In addition, from an early date, Congress conferred further discretion over spending by authoriz-

ing the transfer of appropriated funds within departments of the Executive Branch. See, *e.g.*, Act of Mar. 3, 1809, ch. 28, §§ 1-2, 2 Stat. 535-536; Act of May 1, 1820, ch. 52, § 5, 3 Stat. 568; Act of Aug. 26, 1842, ch. 202, § 23, 5 Stat. 533; Act of Feb. 12, 1868, ch. 8, § 2, 15 Stat. 36 (repealing transfer authority). Congress gives the Executive Branch similar discretion whenever it passes "lump-sum" appropriations bills. See *Lincoln* v. *Vigil*, 508 U.S. 182, 191-192 (1993).

During the early 1970s, the Nixon Administration attempted to assert broad Executive Branch control over spending by impounding funds that had been appropriated for a wide variety of federal programs. That effort led to a series of lawsuits challenging various impoundments. See *City of New Haven* v. *United States*, 634 F. Supp. 1449, 1454-1455 (D.D.C. 1986) (summarizing cases), aff'd, 809 F.2d 900 (D.C. Cir. 1987). The courts resolved those disputes by construing the applicable appropriations statutes to determine whether Congress intended for the President to have discretion whether or not to expend the impounded funds. See, *e.g.*, *Train* v. *City of New York*, 420 U.S. 35, 44-46 (1975).

In response to the impoundment controversy, Congress enacted the Impoundment Control Act of 1974 (ICA), Pub. L. No. 93-344, Tit. X, 88 Stat. 332 (codified as amended at 2 U.S.C. 681 *et seq.*). The Impoundment Control Act distinguishes between two forms of impoundment: deferrals (delays in spending during the course of a fiscal year) and rescissions (permanent withholding of appropriated funds). See 2 U.S.C. 682(1) and (3). The Act authorized the President to engage in deferrals but made that authority subject

to a one-House legislative veto. 2 U.S.C. 684 (1982).[1] The Act prohibited the President from engaging in unilateral rescissions. Instead, it authorized the President to propose rescissions to Congress under a mechanism for expedited legislative consideration. 2 U.S.C. 683 (1982).

2. The Line Item Veto Act, enacted in April 1996 as an amendment to the Impoundment Control Act, is designed to enhance the limited rescission authority provided in that Act. Once a bill or joint resolution "has been signed into law pursuant to Article I, section 7, of the Constitution of the United States," the Line Item Veto Act gives the President the authority to "cancel in whole" specific spending and revenue items contained in that law. ICA § 1021(a) (2 U.S.C. 691(a)); App., *infra*, 32a.[2]

The President's authority under the Act extends to three budgetary categories: "dollar amount[s] of discretionary budget authority," "item[s] of new direct spending," and "limited tax benefit[s]." ICA § 1021(a) (2 U.S.C. 691(a)); App., *infra*, 32a-33a. A "dollar amount of discretionary budget authority" is the entire amount specified for one purpose in an appropriations law, accompanying committee report or state-

---

[1] This Court's decision in *INS* v. *Chadha*, 462 U.S. 919 (1983), made clear that the Impoundment Control Act's legislative veto provision was unconstitutional. See *City of New Haven* v. *United States*, 809 F.2d 900, 905 (D.C. Cir. 1987) (government conceded unconstitutionality of Section 684's legislative veto provision). Congress subsequently amended the Act to eliminate that provision. Act of Sept. 29, 1987, Pub. L. No. 100-119, § 206(a), 101 Stat. 785-786.

[2] Section 2 of the Line Item Veto Act added a new Part C to the Impoundment Control Act. The citations in the text to "ICA §" are to Sections of that new Part C.

ment of managers, or authorizing law. ICA § 1026(7) (2 U.S.C. 691e(7)); App., *infra*, 50a-51a. An "item of new direct spending" is a specific provision that will result in "an increase in budget authority or outlays" for entitlements, food stamps, or other programs funded other than through annual appropriations. ICA § 1026(8) (2 U.S.C. 691e(8)); App., *infra*, 51a. A "limited tax benefit" is a revenue-losing provision that gives a tax reduction to 100 or fewer beneficiaries, or a provision that provides "temporary or permanent transitional relief" to ten or fewer beneficiaries. ICA § 1026(9) (2 U.S.C. 691e(9)); App., *infra*, 52a-54a.

Cancellation of a dollar amount of discretionary budget authority operates to rescind that authority. ICA § 1026(4)(A) (2 U.S.C. 691e(4)(A)); App., *infra*, 48a. Cancellation of an item of new direct spending or a limited tax benefit prevents the cancelled spending or revenue provision from having "legal force or effect." ICA § 1026(4)(B) and (C) (2 U.S.C. 691e(4)(B) and (C)); App., *infra*, 48a-49a. The President may not use cancelled funds for any purpose other than deficit reduction. ICA §§ 1023(b), 1024 (2 U.S.C. 691b(b), 691c); App., *infra*, 36a-39a. Deficit reduction is accomplished through a statutory "lockbox" procedure, under which the Office of Management and Budget (OMB) must calculate the deficit reduction from the cancellation and "lock in" the savings by adjusting the calculations submitted to Congress under the Gramm-Rudman-Hollings Act. ICA § 1024(a) and (b) (2 U.S.C. 691c(a) and (b)); App., *infra*, 37a-38a.

The President is authorized to cancel an item if he determines that doing so will "(i) reduce the Federal budget deficit; (ii) not impair any essential Government functions; and (iii) not harm the national

interest." ICA § 1021(a)(A) (2 U.S.C. 691(a)(A)); App., *infra*, 33a. The President must notify Congress of any cancellation within five calendar days after the enactment of the law providing the item that is being cancelled. ICA § 1021(a)(B) (2 U.S.C. 691(a)(B)); App., *infra*, 33a.

A cancellation under the Act takes effect upon Congress's receipt of the President's notification. ICA § 1023(a) (2 U.S.C. 691b(a)); App., *infra*, 36a. The Act provides for highly expedited consideration by each House of Congress of a bill to set aside a cancellation after receipt of the President's notification. ICA §§ 1025, 1026(6) (2 U.S.C. 691d, 691e(6)); App., *infra*, 39a-47a, 49a-50a. If a disapproval bill is enacted into law, all disapproved cancellations become null and void and the cancelled items become effective. ICA § 1023(a) (2 U.S.C. 691b(a)); App., *infra*, 36a. A disapproval bill, if it becomes law, is not subject to the President's cancellation authority under the Act. ICA § 1021(c) (2 U.S.C. 691(c)); App., *infra*, 34a.

3. The Line Item Veto Act took effect on January 1, 1997. See App., *infra*, 2a, 58a-59a. Appellees—six Members of Congress, one of whom has since left office—filed suit the following day.[3] They named as defendants Franklin D. Raines, the Director of OMB, and Robert E. Rubin, the Secretary of the Treasury. Complaint at 1; see App., *infra*, 2a.[4] Appel-

---

[3] A similar constitutional challenge was brought by a federal labor union immediately after the Act was signed into law in April 1996. That action was dismissed on standing and ripeness grounds. See *National Treasury Employees Union* v. *United States*, 101 F.3d 1423 (D.C. Cir. 1996).

[4] Appellees alleged that "defendant Raines is responsible for executing the President's cancellations of budgetary and spending authority under the Act," and that "defendant Rubin

lees alleged that "the Act confers on the President powers of veto, revision, and repeal of federal law that violate Article I of the Constitution." Complaint at 2 (¶ 1). They further alleged that

> [t]he Act directly and concretely injures [appellees], in their official capacities, by (a) altering the legal and practical effect of all votes they may cast on bills containing such separately vetoable items, (b) divesting [appellees] of their constitutional role in the repeal of legislation, and (c) altering the constitutional balance of powers between the Legislative and Executive Branches, both with respect to measures containing separately vetoable items and with respect to other matters coming before Congress.

Id. at 4-5 (¶ 14). The complaint did not allege that the President had exercised his cancellation authority under the Act.

4. The district court denied the government's motion to dismiss the complaint and entered summary judgment in favor of appellees. App., *infra*, 1a-29a.

a. The district court first held that appellees had standing to bring their suit. App., *infra*, 9a-12a. The court relied on prior D.C. Circuit decisions holding that Members of Congress have "standing to challenge measures that affect their constitutionally prescribed lawmaking powers," although it recognized that "the Supreme Court has never endorsed

---

is responsible for executing the President's cancellations of 'limited tax benefits' under the Act and for executing and enforcing the tax laws of the United States." Complaint at 3-4 (¶¶ 11-12).

the Circuit's analysis of standing in such cases." *Id.* at 10a-11a. Applying those circuit precedents, the district court held that "[appellees'] claim of injury in this case, namely, that the Act dilutes their Article I voting power, is likewise of the kind that suffices to confer standing under Article III." *Id.* at 11a. By virtue of the Act, the court explained, "[appellees'] votes mean something different from what they meant before, for good or ill, and [appellees] who perceive it as the latter are thus 'injured' in a constitutional sense whenever an appropriations bill comes up for a vote, whatever the President ultimately does with it." *Id.* at 11a-12a.

The district court also held that appellees' claims were ripe for adjudication despite the fact that the President had not yet exercised any cancellation authority under the Act. App., *infra*, 12a-15a. The court explained that, "[b]ecause [appellees] now find themselves in a position of unanticipated and unwelcome subservience to the President before and after they vote on appropriations bills, Article III is satisfied." *Id.* at 14a. The court noted as well that "the budgetary process is already underway," and that "appropriations votes are inevitable, and 'certainly impending.'" *Ibid.* (quoting *Whitmore* v. *Arkansas*, 495 U.S. 149, 158 (1990)).[5]

---

[5] Section 3(a)(1) of the Line Item Veto Act expressly authorizes suits by Members of Congress challenging the constitutionality of any provision of the Act. App., *infra*, 56a (2 U.S.C. 692(a)(1)). Section 3(c) of the Act directs both the district court and this Court to expedite disposition of such suits "to the greatest possible extent." *Id.* at 57a (2 U.S.C. 692(c)). The district court construed those provisions as rendering inapplicable any prudential constraints on the court's

b. On the merits, the district court concluded that the Line Item Veto Act is unconstitutional. App., *infra*, 16a-29a. The court first observed that, under the Presentment Clause, U.S. Const. Art. I, § 7, Cl. 2, the President must approve or disapprove *in toto* any bill passed by both Houses of Congress. App., *infra*, 18a. The court acknowledged that any appropriations law whose provisions are subject to cancellation under the Act "will have been 'approved' in accordance with the Presentment Clause." *Id.* at 20a. The court concluded, however, that, "following approval [of an appropriations bill], a cancellation by the President is a legislative repeal that itself must comply with Presentment Clause procedures." *Ibid.* The court reasoned:

> Where the President signs a bill but then purports to cancel parts of it, he exceeds his constitutional authority and prevents both Houses of Congress from participating in the exercise of lawmaking authority. The President's cancellation of an item unilaterally effects a repeal of statutory law such that the bill he signed is not the law that will govern the Nation. That is precisely what the Presentment Clause was designed to prevent.

Id. at 21a-22a.

The district court also acknowledged that the President may be vested with discretionary authority to impound, or to decline to spend, funds previously appropriated by Congress. App., *infra*, 22a-23a. Appellants contended that the President's cancellation

---

exercise of jurisdiction, leaving only the requirements of Article III. See *id.* at 9a n.5, 14a n.8, 16a.

authority under the Act is simply a form of prospective impoundment authority, one that makes individual spending items in an appropriations law discretionary rather than mandatory for a limited period following the law's enactment. The district court rejected that argument, stating that cancellation under the Act "is simply not the same thing as impoundment," but instead "is equivalent to repeal" of the underlying appropriations law. *Id.* at 24a-25a. The court explained:

> Cancellation forever renders a provision of federal law without legal force or effect, so the President who canceled an item and his successors must turn to Congress to reauthorize the foregone spending. Whereas delegated authority to impound is exercised from time to time, in light of changed circumstances or shifting executive (or legislative) priorities, cancellation occurs immediately and irreversibly.

Id. at 25a. The court also sought to distinguish the Line Item Veto Act from statutes previously upheld by this Court on the ground that, in its view, the Act "hands off to the President authority over fundamental legislative choices" and "spares Congress the burden of making those vexing choices of which programs to preserve and which to cut." *Id.* at 27a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The district erred both in holding that appellees' objections to the Line Item Veto Act are justiciable in an Article III court and in declaring the Act to be unconstitutional. Members of Congress have no judicially cognizable interest in the operation or the outcome of the legislative process. Judicial intervention is particularly unwarranted where, as here, the President has yet to take any action that is claimed to offend Article I. Appellees' request for a declaration by the district court that the Act is unconstitutional is not a "Case" or "Controversy" within the meaning of Article III; it is a classic request for an advisory opinion.

If the Court were nevertheless to find this case justiciable, the judgment of the district court should be set aside on the merits. Contrary to the district court's holding, the Line Item Veto Act does not authorize the President to "repeal" any portion of a validly enacted federal law. Rather, the Act is simply the latest exercise of Congress's long-standing and well-settled power to vest the Executive Branch with discretion over the expenditure of appropriated funds.

1. Article III of the Constitution confines the jurisdiction of the federal courts to actual "Cases" and "Controversies," and "the doctrine of standing serves to identify those disputes which are appropriately resolved through the judicial process." *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990).

> To satisfy the "case" or "controversy" requirement of Article III, which is the "irreducible constitutional minimum" of standing, a plaintiff must, generally speaking, demonstrate that he has suffered "injury in fact," that the injury is

> "fairly traceable" to the actions of the defendant, and that the injury will likely be redressed by a favorable decision.

Bennett v. *Spear*, No. 95-813 (Mar. 19, 1997), slip op. 6.

"[T]he 'case or controversy' requirement defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded." *Allen* v. *Wright*, 468 U.S. 737, 750 (1984). "This Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court." *Id.* at 754. The "require[ment] that the party seeking review be himself among the injured," *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 563 (1992) (quoting *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972)), ensures that the federal courts are confined to determining "the rights of individuals" and do not usurp the role of the political branches in "[v]indicating the *public* interest (including the public interest in Government observance of the Constitution and laws)," *id.* at 576.

The complaint in this case alleges that

> [t]he Act directly and concretely injures [appellees], in their official capacities, by (a) altering the legal and practical effect of all votes they may cast on bills containing such separately vetoable items, (b) divesting [appellees] of their constitutional role in the repeal of legislation, and (c) altering the constitutional balance of powers between the Legislative and Executive Branches, both with respect to measures containing separately vetoable items and with respect to other matters coming before Congress.

Complaint at 4-5 (¶ 14). For two reasons, appellees' asserted injuries are insufficient to satisfy the case or controversy requirement.

a. This Court has emphasized that "[a]llegations of possible future injury do not satisfy the requirements of Art. III. A threatened injury must be certainly impending to constitute injury in fact." *Whitmore*, 495 U.S. at 158 (internal quotation marks omitted); accord, *e.g.*, *Defenders of Wildlife*, 504 U.S. at 564 & n.2.[6] The gravamen of appellees' suit is that the President will, in the future, employ the authority conferred by the Line Item Veto Act so as to effect what they characterize as a partial "repeal" of appropriations laws enacted by Congress. Even if Members of Congress possessed a judicially cognizable interest in the proper administration of federal law, appellees' claims would be far too speculative to provide a basis for federal jurisdiction.

At the present time, it remains unclear when the President will invoke the cancellation authority contained in the Line Item Veto Act; what items of spending, or limited tax benefits, he will choose to cancel; and whether th se items will be reenacted into law through a disapproval bill. It is, in particular, unclear when or whether legislative measures supported by appellees themselves will be cancelled pursuant to the Act's procedures. Thus, even if a

---

[6] The requirement that a plaintiff's injury be "actual or imminent, not 'conjectural' or 'hypothetical,'" *Whitmore*, 495 U.S. at 155 (quoting *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983)), is closely related to the requirement that the claim be "ripe" for adjudication. Cf. *Reno* v. *Catholic Social Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993) (noting that "ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction").

Member of Congress could be said to suffer a judicially cognizable injury through the frustration of his own legislative preferences, no such injury is either present or imminent in the instant case.[7]

b. Even if this suit had been brought as a challenge to an actual exercise of the President's cancellation authority, appellees would lack standing. This Court has

> consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution

---

[7] In explaining its contrary conclusion, the district court stated that, "[b]ecause [appellees] now find themselves in a position of unanticipated and unwelcome subservience to the President before and after they vote on appropriations bills, Article III is satisfied." App., *infra*, 14a; see also *id.* at 12a ("Under the Act the dynamic of lawmaking is fundamentally altered. Compromises and trade-offs by individual lawmakers must take into account the President's item-by-item cancellation power looming over the end product."). Appellees are free, however, to vote and to participate in legislative negotiations on the basis of their own stated conviction that the Act is unconstitutional and that any exercise of the President's cancellation authority will therefore be a legal nullity. No alteration in "the dynamic of lawmaking" is *compelled* by the Line Item Veto Act. Rather, any such change will result from the fact that other participants in the legislative process do not share appellees' view that the Act is constitutionally deficient. Legislative deliberations frequently take place, however, against a backdrop of substantial disagreement or uncertainty regarding the existing state of the law. Article III's proscription on the issuance of advisory opinions by the federal courts, see, *e.g.*, *United States Nat'l Bank of Oregon* v. *Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 446 (1993), may not be evaded by characterizing that uncertainty as a current injury to Members of Congress. See page 19, *infra*.

> and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.

Defenders of Wildlife, 504 U.S. at 573-574. A private plaintiff could, of course, establish the existence of a case or controversy by demonstrating that the cancellation of a particular budget item (or limited tax benefit) would adversely affect his own economic interests. See, *e.g.*, *Train* v. *City of New York*, 420 U.S. 35, 40 (1975). A member of the public could not, however, obtain judicial review of an exercise of the President's cancellation authority merely by alleging that the cancellation had improperly negated the vote of his own Senator or Representative; that it had subverted the will of Congress; or that it had impermissibly shifted the balance of power between the Legislative and Executive Branches. Any such allegation would present a "generalized grievance" plainly insusceptible of judicial resolution. *United States* v. *Richardson*, 418 U.S. 166, 171 (1974).

Appellees' claim to standing thus rests on the premise that a Member of Congress has a judicially cognizable interest in the proper performance of his legislative duties, in the execution of an Act of Congress, or in the maintenance of the constitutionally prescribed balance of power between the President and Congress, even though his constituents possess no such interest. That premise is contrary to first principles of representative democracy. As then-Judge Scalia explained,

> no officers of the United States, of whatever Branch, exercise their governmental powers as personal prerogatives in which they have a

> judicially cognizable private interest. They wield those powers not as private citizens but only through the public office which they hold. Whatever the realities of private ambition and vainglory may be, in contemplation of law their personal interest in full and unfettered exercise of their authority is no greater than that of all the citizens for whose benefit (and not for the personal benefit of the officeholder) the authority has been conferred.

Moore v. *U.S. House of Representatives*, 733 F.2d 946, 959 (D.C. Cir. 1984) (Scalia, J., concurring in result), cert. denied, 469 U.S. 1106 (1985). Because Members of Congress exercise their powers as representatives and servants of the people, any impairment of their legislative functions causes them no injury that is not shared by the public generally. Cf. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977) (association's standing to sue on behalf of its members requires, *inter alia*, that "its members would otherwise have standing to sue in their own right").[8]

---

[8] This is not to say that impairment of effective governance can never give rise to the sort of "injury" that is redressable by an Article III court. An Executive Branch official who is authorized to conduct litigation *on behalf of the government* can assuredly file suit, or appeal adverse rulings, to vindicate the governmental and public interest in the effective administration of federal law. That is quite different, however, from the proposition that an individual official himself suffers a judicially cognizable injury through the impairment of governmental functions.

Any claim to standing of an individual Member of Congress is thus subject to two distinct objections. First, litigation on behalf of the United States is entrusted to the Executive rather

A holding that an individual Member has a personal interest in the operation or outcome of the legislative process that can be vindicated by an Article III court would also subvert the separation of powers principles that the case or controversy requirement is intended to serve. That requirement ensures that the Judicial Branch does not exercise a general superintendence over the workings of the federal government. See *Allen*, 468 U.S. at 760 (explaining that abandonment of standing requirements "would have the federal courts as virtually continuing monitors of the wisdom and soundness of Executive action") (quoting *Laird* v. *Tatum*, 408 U.S. 1, 15 (1972)). Rather, the federal courts are to resolve constitutional and other legal issues only in the course of determining "the rights of individuals." *Defenders of Wildlife*, 504 U.S. at 576. To hold that a Member's interest in the proper operation of the legislative process is itself an indi-

---

than the Legislative Branch. The "discretionary power to seek judicial relief" is "authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law, and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.'" *Buckley* v. *Valeo*, 424 U.S. 1, 138 (1976) (per curiam) (quoting U.S. Const. Art. II, § 3). Second, a suit brought by an individual Member cannot properly be characterized as one filed on behalf of Congress (let alone the United States), particularly where (as here) the suit attacks the constitutionality of a federal statute. Cf. *Bender* v. *Williamsport Area Sch. Dist.*, 475 U.S. 534, 544 (1986) (appellant's status as member of school board "does not permit him to 'step into the shoes of the Board' and invoke its right to appeal"; "[g]enerally speaking, members of collegial bodies do not have standing to perfect an appeal the body itself has declined to take").

vidual right would effectively negate that limitation. See *Moore*, 733 F.2d at 959 (Scalia, J., concurring in result).

The terms "Cases" and "Controversies" were intended by the Framers to confine the federal courts to resolving those disputes that "are traditionally thought to be capable of resolution through the judicial process." *Flast* v. *Cohen*, 392 U.S. 83, 97 (1968). The personal disagreement by individual Members of Congress with the considered judgment of the President and of Congress as a whole regarding the validity of an Act of Congress is plainly not within the traditional purview of the courts. Neither the President nor Congress (or its individual Members) could unilaterally obtain an advisory opinion from this Court or a lower federal court regarding the constitutionality of the Line Item Veto Act, even if the request for such an opinion was motivated by a desire to eliminate legal uncertainty about the manner in which they should exercise their respective powers and responsibilities. See Correspondence of the Justices, *reprinted in* 3 *The Correspondence and Public Papers of John Jay* 486-489 (H. Johnston ed. 1891); *Muskrat* v. *United States*, 219 U.S. 346, 354 (1911). That issue is no more suitable for judicial resolution in its present posture merely because several individual Members of Congress have written their request in the form of a complaint and named as defendants two officers of the other political Branch who happen to hold a contrary view of the constitutional question.[9]

---

[9] It is, moreover, the President, not the Director of OMB or the Secretary of the Treasury, in whom the Act vests the power to cancel items of spending or limited tax benefits.

There is, finally, no principled limitation on the theory that Members of Congress have a judicially cognizable interest in the operation or outcome of the legislative process. Any contention that the President's conduct violates statutory requirements or prohibitions can be recast as a claim that the votes of Members of Congress have been nullified. Presidential action that is alleged to transgress the Constitution can frequently be characterized as shifting the balance between the Executive and Legislative Branches. And any statutory assignment of power to the President can be said to affect future interactions between the political Branches, since the President will have no incentive to negotiate for authority that he already possesses. The district court erred in recognizing such an unprecedented expansion of power in the federal courts.

2. The district court also erred in concluding that the Line Item Veto Act violates the Presentment Clause.

a. Although Article I of the Constitution vests "[a]ll legislative Powers" in Congress, it "do[es] not prevent Congress from obtaining the assistance of its coordinate Branches" in furtherance of its responsibilities. *Mistretta* v. *United States*, 488 U.S. 361, 372 (1989). Congress is therefore free to "leav[e] a certain degree of discretion to executive or judicial actors" in the execution of federal laws. *Touby* v. *United States*, 500 U.S. 160, 165 (1991). This Court has repeatedly sustained the constitutionality of laws that vest the Executive Branch with discretion over the implementation of federal statutes and programs, notwithstanding claims that Congress had impermissibly "delegated" its legislative powers. See, *e.g.*, *Loving* v. *United States*, 116 S. Ct. 1737 (1996); *Touby*,

supra; *Skinner* v. *Mid-America Pipeline Co.*, 490 U.S. 212 (1989); *Mistretta*, *supra*; *FEA* v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976); *Lichter* v. *United States*, 334 U.S. 742, 785 (1948); *American Power & Light Co.* v. *SEC*, 329 U.S. 90 (1946); *Yakus* v. *United States*, 321 U.S. 414 (1944); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *NBC* v. *United States*, 319 U.S. 190 (1943); *New York Central Securities Corp.* v. *United States*, 287 U.S. 12 (1932); *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394 (1928); *Field* v. *Clark*, 143 U.S. 649 (1892); *Synar* v. *United States*, 626 F. Supp. 1374, 1383-1384 & n.9 (D.D.C.) (per curiam) (three-judge court) (citing cases), aff'd *sub nom. Bowsher* v. *Synar*, 478 U.S. 714 (1986).

As we have explained above, Executive Branch discretion has long been an integral part of Congress's exercise of its spending powers under Article I. See pages 3-4, *supra*. Although the withholding of appropriated funds has frequently engendered litigation, the point of dispute invariably has been one of statutory construction—*i.e.*, whether Congress in fact gave the Executive Branch authority to withhold the contested funds. See, *e.g.*, *Train*, 420 U.S. at 44-46. The political Branches and the courts have shared the assumption that Congress is free to confer that authority if it wishes to do so.

The Line Item Veto Act is simply the latest chapter in Congress's efforts to enlist the Executive Branch's assistance in controlling spending by giving the President discretionary authority over federal expenditures. By virtue of the Act, the President may decline to give effect to specified spending and revenue items in a federal law, during a brief period following the law's enactment, if the President determines that cancelling a particular item will "reduce

the Federal budget deficit," will not "impair any essential Government functions," and will not "harm the national interest." ICA § 1021(a)(A) (2 U.S.C. 691(a)(A)); App., *infra*, 33a. The Act operates to make the specified spending and revenue items discretionary, rather than mandatory, where the President finds that the Act's criteria have been met. For purposes of Article I, the Line Item Veto Act is no different from any other federal statute that gives the President discretion to decide whether or not to expend funds that have been appropriated by Congress.

b. When Congress vests the Executive Branch with discretion over the implementation of federal laws, the nondelegation doctrine generally provides the constitutional standards that govern the permissible scope of the Executive Branch's role. The touchstone of the nondelegation doctrine is whether Congress has provided an "intelligible principle" by which the executive discretion may be exercised. *Mistretta*, 488 U.S. at 372; *J.W. Hampton*, 276 U.S. at 406. This Court "has deemed it constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of th[e] delegated authority." *Mistretta*, 488 U.S. at 372-373 (internal quotation marks omitted). Under that approach, the Court has frequently "upheld * * * delegations under standards phrased in sweeping terms." *Loving*, 116 S. Ct. at 1750.[10]

---

[10] For example, the Court has sustained the constitutionality of statutes giving the Executive Branch the authority to regulate broadcast licensing as required by "public interest, convenience, or necessity" (*NBC*, 319 U.S. at 194, 225-226); to

The Line Item Veto Act places constitutionally sufficient constraints on the President's exercise of discretion over federal spending.[11] To begin with, the Act permits the President to cancel items only "in whole" (ICA § 1021(a) (2 U.S.C. 691(a)); App., *infra*, 32a), not in part, thereby requiring him to make "an all or nothing decision." H.R. Conf. Rep. No. 491, 104th Cong., 2d Sess. 33 (1996). And because the Act's

---

approve consolidation of carriers "in the public interest" (*New York Central Securities Corp.*, 287 U.S. at 16, 24); to recover "excessive profits" on military contracts (*Lichter*, 334 U.S. at 778-786); to fix prices that "will be generally fair and equitable and will effectuate the purposes" of the law (*Yakus*, 321 U.S. at 420, 426-427); and to determine "just and reasonable" natural gas rates (*Hope Natural Gas Co.*, 320 U.S. at 600-601).

[11] It is far from clear that congressional appropriations of money are subject to the nondelegation principles that generally apply to regulation of private conduct. This Court has observed that "certain categories of administrative decisions * * * traditionally have [been] regarded as 'committed to agency discretion.'" *Lincoln* v. *Vigil*, 508 U.S. 182, 191 (1993). "The allocation of funds from a lump-sum appropriation is" one such decision, since "a fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions." *Id.* at 192 (internal quotation marks omitted). So long as the activities on which appropriated funds are spent are themselves authorized by statute, and so long as the Executive Branch adheres to the constitutional directive that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law," Art. I, § 9, Cl. 7; see *OPM* v. *Richmond*, 496 U.S. 414, 424-425 (1990), we believe that no constitutional infirmity would exist even if an appropriations law placed no further constraints on Executive Branch discretion. Even if the nondelegation standard articulated in *Mistretta* is assumed to apply in this context, however, it is easily satisfied here.

"lockbox" feature (see page 6, *supra*) requires the President to devote any cancelled amounts to deficit reduction, the President has no authority to spend money on *any* project beyond the specific amount appropriated by Congress. The Act's requirement that each budgetary item must be devoted (in its entirety) either to a congressionally defined purpose or to deficit reduction is itself a substantial limitation on the President's discretion.

In addition, however, the Act provides meaningful guidance to the President in his choice between those two alternatives. The Act permits the President to cancel particular spending or revenue items only if he determines that the cancellation will "(i) reduce the Federal budget deficit; (ii) not impair any essential Government functions; and (iii) not harm the national interest." ICA § 1021(a)(A) (2 U.S.C. 691(a)(A)); App., *infra*, 33a. The Act also requires the President to support any cancellation by providing Congress with, *inter alia*, the reasons for the cancellation; the estimated fiscal, economic, and budgetary effects of the cancellation; and the estimated effect of the cancellation upon the objects, purposes, and programs for which the cancelled authority was provided. ICA § 1022(b) (2 U.S.C. 691a(b)); App., *infra*, 34a-35a.

c. Thus, contrary to the district court's conclusion, the Line Item Veto Act does not authorize the President to exercise "legislative authority" or to "repeal" a law. App., *infra*, 24a, 25a. An Executive Branch official administering an Act of Congress "does not exercise 'legislative' power." *INS* v. *Chadha*, 462 U.S. 919, 953 n.16 (1983). "The bicameral process is not necessary as a check on the Executive's administration of the laws because his admin-

istrative activity cannot reach beyond the limits of the statute that created it—a statute duly enacted pursuant to Art. I, §§ 1, 7." *Ibid.* When an Executive Branch official declines to exercise discretionary spending authority conferred by statute, he does not thereby "repeal" that statute—he implements it according to its terms.[12]

The district court also sought to distinguish the Line Item Veto Act from statutes previously upheld by this Court on the ground that the Act "hands off to the President authority over fundamental legislative choices" and "spares Congress the burden of making those vexing choices of which programs to preserve and which to cut." App., *infra*, 27a. The precise import of those statements is unclear. If the court meant that the fashioning of budgetary priorities is an inherently legislative (and thus nondelegable) function, the court's analysis cannot be squared with Congress's consistent (and heretofore unquestioned) practice of authorizing the Executive Branch to exercise considerable discretion over the expenditure of appropriated funds. If the district court meant that the discretion conferred by the Line Item Veto Act is

---

[12] The Presentment Clause and related provisions of Article I establish "a single, finely wrought and exhaustively considered, procedure" for the enactment of a law. *Chadha*, 462 U.S. at 951. It is, of course, undisputed that the Line Item Veto Act itself was enacted into law in conformity with that "finely wrought" procedure. It is equally clear that the Act does not exempt any other federal law from the requirements of the Presentment Clause. The President's cancellation authority comes into play only *after* the requirements of the Presentment Clause, including the President's approval of the presented bill, have been satisfied.

standardless or otherwise unduly broad, it was incorrect for the reasons stated at pages 23-24, *supra*.

Finally, no constitutional infirmity results from the fact that the President must exercise, or decline to exercise, his cancellation authority within the five-day period after enactment of an appropriations law. There is, in particular, no basis whatever for the district court's suggestion that this feature of the Line Item Veto Act effects a particularly "expansive * * * delegation[] of power." App., *infra*, 25a. To the contrary, the discretion thus conferred is quite plainly *narrower* than would be the case if the President were vested with continuing authority to revisit the question whether particular expenditures should be made.

* * * * *

This Court recently observed that "[s]eparation-of-powers principles are vindicated, not disserved, by measured cooperation between the two political branches of the Government, each contributing to a lawful objective through its own processes." *Loving*, 116 S. Ct. at 1751. The Act at issue here represents such an exercise in "measured cooperation." The district court's conclusion that the Act is at odds with Article I should be rejected.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General
FRANK W. HUNGER
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
MALCOLM L. STEWART
Assistant to the Solicitor General
DOUGLAS N. LETTER
SCOTT R. MCINTOSH
Attorneys

APRIL 1997

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 97-0001 (TPJ)

SEN. ROBERT C. BYRD, ET AL., PLAINTIFFS

v.

FRANKLIN D. RAINES, ET AL., DEFENDANTS

MEMORANDUM AND ORDER

[Filed: Apr. 10, 1997]

This action challenges the validity of legislation entitled the Line Item Veto Act, Pub. Law No. 104-130, 110 Stat. 1200 (1996) (to be codified at 2 U.S.C. §§ 681 note, 691 *et seq.*) ("the Act"), which empowers the President unilaterally to "cancel" certain appropriations and tax benefits after signing them into law. The Act represents an effort by Congress to enlist presidential assistance in controlling rampant federal spending by conferring upon the President what it termed a species of "enhanced rescission" power, expanding the authority he formerly possessed under the Impoundment Control Act of 1974. Plaintiffs, four

Senators and two Congressmen,[1] contend that the *mechanism* chosen by Congress to its desired end contravenes the text and purpose of Article I, section 7, clause 2, known as the "Presentment Clause" of the Constitution. Rather than making expenditures of federal funds appropriated by Congress matters of presidential discretion, the Act effectively permits the President to repeal duly enacted provisions of federal law. This he cannot do. Accordingly, the Court will grant plaintiffs' motion for summary judgment, deny defendants' motion, and declare the Act unconstitutional.

I.

Operation of the Line Item Veto Act

Following years of importuning by successive Presidents and vacillation by earlier Congresses, President Clinton approved the Line Item Veto Act as passed by the 104th Congress on April 9, 1996. Immediately after it became effective on January 1, 1997, the plaintiff Senators and Congressmen filed this action to declare it void. Named defendants are the Director of the Office of Management and Budget and the Secretary of the Treasury—the officials alleged, respectively, to be responsible for executing the President's "cancellations" of spending items and limited tax benefits under the Act. The United States Senate and the Bipartisan Legal Advisory Group of the United States House of Representatives

---

[1] Senators Robert C. Byrd, Daniel Patrick Moynihan, Carl Levin, and Mark O. Hatfield, and Representatives David E. Skaggs and Henry A. Waxman. All but Senator Hatfield are currently sitting Members of the 105th Congress.

have appeared jointly as *amici curiae* to defend the constitutionality of the Act.

The Act, which sunsets on January 1, 2005, allows the President, after signing a bill into law, to "cancel in whole"—

(1) any dollar amount of discretionary budget authority;
(2) any item of new direct spending; or
(3) any limited tax benefit.

2 U.S.C. § 691(a). "Dollar amounts of discretionary budget authority" include any dollar amount set forth in an appropriation law, including those to be found separately in tables, charts, or explanatory text of statements or committee reports accompanying legislation. 2 U.S.C. § 691e(7). Thus the President's cancellation power applies to legislative history as well as to statutory text itself. "Items of new direct spending" generally include "entitlement" payments to individuals or to state and local governments. 2 U.S.C. § 691e(8); H.R. Conf. Rep. No. 491, 104th Cong., 2d Sess. at 36 (1996). "Limited tax benefits" are those revenue-losing provisions that apply to 100 or fewer beneficiaries in any fiscal year, or tax provisions that provide temporary or permanent transitional relief for 10 or fewer beneficiaries from a change in the Internal Revenue Code. 2 U.S.C. § 691e(9). The Act directs the congressional Joint Committee on Taxation to identify limited tax benefits contained in bills and joint resolutions, and provides that those bills and resolutions may include a separate section in which identified tax benefits are not subject to cancellation. 2 U.S.C. § 691f(a) - (c).

The most critical definition is found in § 691e(4). The term "cancel" or "cancellation" means "to re-

scind" any dollar amount of discretionary budget authority or to prevent items of new direct spending or limited tax benefits "from having legal force or effect." *Id.*

To exercise the cancellation power the President must first determine that it will—

(i) reduce the Federal budget deficit;
(ii) not impair any essential Government functions; and
(iii) not harm the national interest.

2 U.S.C. § 691(a)(A). The President effects a cancellation by transmitting a "special message" to Congress within five calendar days (excluding Sundays) after enactment of the law containing the item(s) in question. 2 U.S.C. § 691(a)(B). The Act spells out the content requirements for a special message and provides that it shall be printed in the Federal Register. 2 U.S.C. § 691a.

Once an item has been canceled, no further action by Congress is required; cancellation takes effect upon Congress' receipt of the special message. 2 U.S.C. § 691b(a). Congress may thereafter introduce a "disapproval bill" to reenact any canceled items within five days of receiving the special message, and must pass it within 30 days.[2] 2 U.S.C. § 691d(b), (c)(1). The President can, of course, exercise a conventional veto of any disapproval bill, but Congress can then reinstate the *status quo ante* by overriding that veto.

---

[2] The President has no authority to cancel items contained in an enacted disapproval bill; he must take it or leave it as presented to him.

Historical Background

The Act is best understood against the historical backdrop of the efforts of the President and Congress over the years to control government spending and, in more recent times, to reduce an ever-increasing federal budget deficit. It is a product of many years of inter-branch conflict and compromise over how to accomplish those goals. Since the outset of the 19th Century, American Presidents have labored to influence Congress' spending habits, and many have lobbied in particular for the authority to veto selected provisions of bills presented for their signature. *See* 12 Op. Off. Legal Counsel 128, 157-65 (1988). Congress has considered both amending the Constitution and enacting several alternative legislative measures to give the President the increased authority he has sought and Congress has intermittently resisted.

Although Presidents have uniformly acknowledged that the Constitution affords no inherent authority for a line-item veto[3]—indeed, as explained below, it

---

[3] *See, e.g.*, 33 *Writings of George Washington* 96 (1940) ("From the nature of the Constitution, I must approve all the parts of a Bill, or reject it in toto."); William Howard Taft, *The Presidency: Its Duties, Its Powers, Its Opportunities and Its Limitations* 11 (1916) ("[The President] has no power to veto parts of the bill and allow the rest to become a law. He must accept it or reject it . . . ."); 12 Op. Off. Legal Counsel 128, 157-65 (1988) (reviewing other Presidents' views and experience).

Although some commentators have argued that the Constitution does provide inherent authority for a line item veto, *see* Stephen Glazier, *Reagan Already Has Line-Item Veto*, Wall St. J., Dec. 4, 1987, at A14, col. 4; L. Gordon Crovitz, *The Line-Item Veto: The Best Response When Congress Passes One Spending "Bill" A Year*, 18 Pepp. L. Rev. 43 (1990), most scholars have concluded that the text of Article I, Sec. 7, un-

clearly forbids anything but rejection of a bill *in toto*—they have managed to exert their will by "impounding"— or simply not spending—appropriated funds. In some instances, Presidents have refused to spend money on measures that conflicted with their foreign policy objectives, or that would advance an unconstitutional purpose. Most of the time, however, Presidents simply preferred not to spend the money for the purposes for which Congress had allocated it. *See, e.g.*, David A. Martin, *Protecting the Fisc: Executive Impoundment and Congressional Power*, 82 Yale L.J. 1636, 1644-45 (1973). Some impoundments have been challenged successfully in federal court; others have either been judicially sanctioned or not contested at all. *See City of New Haven v. United States*, 634 F. Supp. 1449, 1454 (D.D.C. 1986), *aff'd* 809 F.2d 900 (D.C. Cir. 1987).

Although presidential impoundments throughout the 19th century occurred in a state of uncertainty as to their legality, Congress has in this century conferred a measure of legitimacy upon them and given some directions as to their use. In the Anti-Deficiency Acts of 1905 and 1906, requiring "appor-

---

equivocally precludes such authority. *See, e.g.*, Bruce Fein & William Bradford Reynolds, *Wishful Thinking on a Line-Item Veto*, Legal Times, Nov. 13, 1989, at 30; Lawrence Tribe and Philip Kurland, Letter to Sen. Edward Kennedy, 135 Cong. Rec. S.14,387 (daily ed. Oct. 31, 1989); 12 Op. Off. Legal Counsel 128 (1988); 9 Op. Off. Legal Counsel 28 (1985). Moreover, at least two courts have stated in dicta that the President possesses no inherent item veto. *See Lear Siegler, Inc. v. Lehman*, 842 F.2d 1102, 1124 (9th Cir.), *reh'g en banc ordered*, 863 F.2d 693 (9th Cir. 1988), *withdrawn on other grounds*, 893 F.2d 205 (9th Cir. 1989) (en banc); *Thirteenth Guam Legislature v. Bordallo*, 430 F. Supp. 405, 410 (D. Guam App. Div. 1977), *aff'd*, 588 F.2d 265 (9th Cir. 1978).

tionment" aimed at saving money for the end of a fiscal year, Congress also allowed the President to waive spending appropriations in the event of emergencies or unusual circumstances. Act of March 3, 1905, ch. 1484, § 4, 33 Stat. 1257; Act of Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48. When Congress amended the Anti-Deficiency Act in 1950, it created a mechanism for the Executive Branch to recommend the rescission of any reserves not required to carry out the purposes underlying an appropriation. General Appropriation Act of 1951, ch. 896, § 1211(c)(2), 64 Stat. 595 (current version at 31 U.S.C. § 1512(c)(1)).

Congress has not, however, always been sanguine about Presidents' refusal to spend appropriated funds. During the Nixon administration, for example, the President's extensive resort to impoundment prompted many lawsuits. *See City of New Haven*, 634 F. Supp. at 1454 ("by 1974, impoundments had been vitiated in more than 50 cases and upheld in only four"). President Nixon's reluctance to spend appropriated funds also provoked passage of the Impoundment Control Act of 1974 (the "ICA"), Pub. L. No. 93-344, 88 Stat. 332, a statute critical to an understanding of the present Act.

The ICA recognized two types of impoundment: "deferral" and "rescission." Deferral affects the timing of expenditures, and is accomplished by "withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities," or any other type of Executive action or inaction accomplishing the same result. 2 U.S.C. § 682(1). Deferral is permitted for contingencies, to effect savings achieved through changes or efficiency, or as specifically provided by law. 2 U.S.C. § 684(b). Under the

ICA, the President effects a deferral, just as he cancels an item under the Line Item Veto Act, by transmitting to Congress a special message containing statutorily required information. 2 U.S.C. § 684(a). Also like cancellations under the Act, deferrals become effective upon Congress' receipt of the special message; unlike cancellations, however, they expire with the end of the fiscal year.[4] *Id.*

A rescission, under the ICA, is the cancellation of budget authority. 2 U.S.C. § 682(3). In contrast to a cancellation under the Line Item Veto Act, the ICA requires the President to *propose* a rescission by transmitting a special message to Congress, which Congress may enact or not, as it chooses, within 45 days. 2 U.S.C. § 683(b). The perceived deficiency of the rescission process under the ICA that inspired passage of the Line Item Veto Act was the necessity of congressional acquiescence. Whenever Congress neglected or declined to pass a bill enacting into law a proposed rescission—a most frequent occurrence—the rescission expired.

The cancellation procedure embodied in the Line Item Veto Act thus came to be known as "enhanced rescission," the enhancement consisting of elimination of the need for congressional action. Two principal alternatives to the Act considered and rejected by the 104th Congress were "expedited rescission" and "separate enrollment." The first, exemplified by S.14

---

[4] Originally, deferrals were automatically effective but subject to a one-House legislative veto. 88 Stat. 335. In light of *INS v. Chadha*, 462 U.S. 919 (1983), the legislative veto component of the ICA was invalidated, *City of New Haven v. Pierce*, 809 F.2d 900 (D.C. Cir 1987), and Congress subsequently amended the ICA to eliminate the offending procedure.

in the 104th Congress, would have preserved the recommendation process but guaranteed that Congress actually and promptly vote on the President's rescission proposals. S. Rep. No. 9, 104th Cong., 1st Sess., at 15 (1995). The second would have treated each item of spending as a separate "bill" for the President to sign or veto. Separate handling of hundreds of items appeared to present insuperable practical obstacles, however, and potential constitutional difficulties as well. *See* 141 Cong. Rec. S.4217, S.4224-35, S.4244 (daily ed. Mar. 21, 1995). Both Houses of Congress also considered and rejected proposed constitutional amendments to impart line item veto authority. S.J. Res. 2, 14, 15, and 16, and H.J. Res. 4, 6, and 17, 104th Cong. (1995).

II.

Before addressing the merits of the case, the Court is obliged to confront defendants' objections as to its justiciability. In a motion to dismiss the complaint defendants contend that plaintiffs lack standing to press their claim. They also assert that the case is not ripe for judicial resolution, and that the "equitable discretion" doctrine requires dismissal. None of these assertions is correct under the law of this Circuit.

Standing[5]

Defendants argue that plaintiffs fail to present a live case or controversy, first, because separation-of-powers considerations counsel against judicial intrusions into disputes between officials of the political

---

[5] Only Article III standing, as opposed to prudential limitations, is at issue in light of Congress' creation of an express right of action in § 692(a)(1) of the Act.

branches and, second, because at this point no presidential cancellation has yet been attempted or threatened, and there has, thus, been no discernible injury.

The parties agree on the standard to be applied: plaintiffs must allege, as "an irreducible minimum," (1) an injury personal to them, (2) that has actually been inflicted by defendants or is certainly impending, and (3) that is redressable by judicial decree. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982). *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Defendants acknowledge that, pursuant to this well-settled standard, this Circuit has repeatedly recognized Members' standing to challenge measures that affect their constitutionally prescribed lawmaking powers. *See, e.g., Michel v. Anderson*, 14 F.3d 623, 625 (D.C. Cir. 1994) (Members had standing to challenge House Rule permitting delegates to vote in Committee of the Whole based on its alleged vote-diluting effect); *Moore v. U.S. House of Representatives*, 733 F.2d 946, 950-53 (D.C. Cir. 1984) (standing to assert violation of constitutional requirement that revenue-raising bills originate in the House), *cert. denied*, 469 U.S. 1106 (1985); *Vander Jagt v. O'Neill*, 699 F.2d 1166, 1168-71 (D.C. Cir.) (standing to challenge leadership's committee-seating assignments), *cert. denied*, 464 U.S. 823 (1983). In each case the D.C. Circuit found no separation-of-powers impediments to adjudication of the merits because, as in the present case, Members' alleged injuries arose from interference with the exercise of identifiable constitutional powers. *See Moore*, 733 F.2d at 951. Although the Supreme Court has never endorsed the

Circuit's analysis of standing in such cases, for this Court's purposes these precedents are controlling.[6]

Plaintiffs' claim of injury in this case, namely, that the Act dilutes their Article I voting power, is likewise of the kind that suffices to confer standing under Article III. Previously, when a Member voted for an appropriations bill containing multiple items, he or she could be certain that any variation of the package once passed would require another vote by both chambers of Congress. Under the Act, however, as plaintiffs describe it, the Member's same vote operates only to present the President with a "menu" of items from which he can select those worthy of his approval, not a legislative *fait accompli* that he must accept or reject in whole, as in the past. As one Senator characterizes it, his vote for an "A-B-C" bill might lead to the *post hoc* creation of an "A-B" law, an "A-C" law, or a "B-C" law, depending on the President's use of his newly conferred cancellation authority, for which neither he nor his colleagues would have voted so reconfigured. Thus, plaintiffs' votes mean something different from what they meant before, for good or ill, and plaintiffs who perceive it as the latter are thus "injured" in a constitutional sense

---

[6] Defendants rely on two concurring opinions by D.C. Circuit Judges in arguing that plaintiffs' injury is not sufficiently personal to create a justiciable controversy. *See Moore*, 733 F.2d at 957-61 (Scalia, J., concurring); *Vander Jagt*, 699 F.2d at 1179-82 (Bork, J., concurring). Yet, as the three-judge court, of which then-Judge Scalia was a member, recognized in *Synar v. United States*, 626 F. Supp. 1374, 1382 (D.D.C. 1986), *aff'd sub nom. Bowsher v. Synar*, 478 U.S. 714 (1986), this Circuit's cases unequivocally establish that Members have "a personal interest . . . in the exercise of their governmental powers." 626 F. Supp. at 1381 & n.7.

whenever an appropriations bill comes up for a vote, whatever the President ultimately does with it.

Circuit precedent has recognized only interference with the "constitutionally mandated process of enacting law" as sufficient to confer standing upon Members to maintain legal action for redress. *Moore*, 733 F.2d at 951. According to plaintiffs, their right to formulate an appropriations bill that meets with the approval of a majority of both Houses alone, ignoring presidential preferences, is mandated by the Presentment Clause itself. Under the Act the dynamic of lawmaking is fundamentally altered. Compromises and trade-offs by individual lawmakers must take into account the President's item-by-item cancellation power looming over the end product. The Court concludes that plaintiffs have standing because they allege that the Act "interferes with their 'constitutional duties to enact laws regarding federal spending' and infringes upon their lawmaking powers under Article I, Section 7." *Synar v. United States*, 626 F. Supp. 1374, 1382 (D.D.C. 1986), *aff'd sub nom. Bowsher v. Synar*, 478 U.S. 714 (1986).

Ripeness

Defendants' primary justiciability contention is that plaintiffs must wait until the President cancels an item to bring this lawsuit. Their facial challenge to the Act would elicit an advisory opinion, defendants argue, because whether the President will exercise his authority at all (and whether various other consequences will follow) is entirely speculative. Indeed, courts may not exercise jurisdiction consistent with Article III where a dispute is so unformed as to fail the "case or controversy" requirement. *See Duke Power Co. v. Carolina Environmental Study Group,*

Inc., 438 U.S. 59, 81 (1978); *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138 (1974). And in constitutional cases, courts must be particularly careful not to render decisions that are unnecessary. *See United States v. National Treasury Employees Union*, 115 S. Ct. 1003, 1019 (1995). The injury that gives shape to a dispute need not have occurred, however, so long as it is "certainly impending." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990).

In focusing solely on the President's actual exercise of his cancellation power, defendants overlook plaintiffs' allegation of ongoing harm that befalls them irrespective of whether the President ever cancels an item.[7] The Supreme Court considered an analogous claim ripe in *Metropolitan Wash. Airports Auth. v. Citizens for the Abatement of Airport Noise, Inc.*, 501 U.S. 252 (1991), where a Board of Review composed of Members of Congress possessed an as-yet unexercised power to veto decisions of MWAA's Board of Directors. "The threat of the veto hangs over the Board of Directors like the sword over Damocles, creating a 'here-and-now subservience' to the Board of Review sufficient to raise constitutional questions," the Court held. *Id.* at 265 n.13. *See also*

---

[7] Even if an actual cancellation by the President were required to cause injury, Article III arguably would not require plaintiffs to wait for that event to invoke the Court's jurisdiction. *See Abbott Labs v. Gardner*, 387 U.S. 136, 140 (1967); *Buckley v. Valeo*, 424 U.S. 1, 117 (1976) (challenge was ripe in anticipation of "impending future rulings and determinations").

The President has expressed his intention to invoke his new powers under the Act *this year*. *See* 141 Cong. Rec. S.8202-03 (daily ed. June 13, 1995) (containing letter from President to Speaker of the House).

Bowsher v. Synar, 478 U.S. 714, 727 n.5 (1986). Because plaintiffs now find themselves in a position of unanticipated and unwelcome subservience to the President before and after they vote on appropriations bills, Article III is satisfied, and this Court may accede to Congress' directive to address the constitutional cloud over the Act as swiftly as possible.[8]

Plaintiffs' declarations make clear that the budgetary process is already underway. The President presented his budget proposal in early February, and Members will consider and vote on appropriations between now and October 1, 1997, when the new fiscal year begins. Moreover, Congress is likely to vote on supplemental appropriations for this fiscal year in the next few months. To be sure, appropriations votes are inevitable, and "certainly impending." *Whitmore*, 495 U.S. at 158.

Defendants' argument that the case is not ripe because further factual development is required is also unpersuasive. The issues in this case are legal, and thus will not be clarified by further factual development. In what context and when the President cancels an appropriation item is immaterial. The Court will be no better equipped to weigh the constitutionality of the President's cancellation of an

---

[8] As in the case of standing, plaintiffs need only satisfy the Article III component of ripeness because Congress unmistakably declared the case fit for judicial review in § 692(c) of the Act. Accordingly, this Circuit's conclusion in *National Treasury Employees Union v. United States*, 101 F.3d 1423, 1431 (D.C. Cir. 1996) ("*NTEU*"), that prudential (as well as constitutional) considerations made the union's challenge to the Act not ripe is inapposite.

item of spending or a limited tax benefit after the fact; the central issue is plain to see right now.[9]

Finally, defendants assert that plaintiffs' claim is not ripe because the Act might be repealed, or suspended with respect to particular appropriations; a disapproval bill might subsequently vindicate a Member's vote as he intended it; or, if not, Congress could override a presidential veto of a disapproval bill. There are two answers to this argument. First, it ignores the "sword of Damocles" effect that pervades the process irrespective of whether the President ever cancels an item. Second, just because Congress *as a whole* can suspend or repeal the Act, or pass a disapproval bill, does not mean that an *individual* Member's injury is illusory. A Member cannot procure any such relief on his own. Indeed, the possibility of relief from Congress as a whole is just the sort of speculative prospect that the Court would reject if it were instead offered in *support* of standing. Just as the *NTEU* plaintiffs did not have standing simply because the Act made certain injuries possible, 101 F.3d at 1429-30, the present plaintiffs' standing is not undermined by virtue of the fact that the Act makes certain remedies conceivable.

---

[9] Moreover, fitness for review is a prudential component of the ripeness doctrine, an inquiry Congress obviated by calling for expedited judicial action. *See Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985); *NTEU*, 101 F.3d at 1431. But even if the Court were to take into account prudential ripeness factors, they actually militate in plaintiffs' favor, because resolving the issue now will avert the cloud that would hang over any canceled item that Congress fails to disapprove.

Equitable Discretion

Defendants urge the Court to exercise its equitable discretion to dismiss the complaint because of separation-of-powers concerns, which apply not only in cases involving internal rules of Congress, *see Skaggs v. Carle*, 898 F. Supp. 1, 2 (D.D.C.), appeal docketed, No. 95-5323 (D.C. Cir. Sept. 25, 1995), but also in cases involving challenges to the validity of the legislation itself, *see Riegle v. Federal Open Market Comm.*, 656 F.2d 873, 881 (D.C. Cir.), *cert. denied*, 454 U.S. 1082 (1981).

In this case, however, the Court's equitable power to abstain from taking jurisdiction has been foreclosed by Congress' own determination to invite a lawsuit. *See* 2 U.S.C. § 692(a)(1). There is therefore neither reason nor occasion to exercise discretion by avoiding the case. *See Synar*, 626 F. Supp. at 1382 ("Section 274 specifically provides for [declaratory] relief to [Members of Congress], thus eliminating whatever equitable discretion might exist and leaving only the limitations of Article III.").

III.

The Court now turns to the issue presented, namely, whether the Act's conferral of cancellation power upon the President violates the Presentment Clause. The Act enjoys a presumption of validity, and the Court may not undertake to evaluate its wisdom. *See INS v. Chadha*, 462 U.S. 919, 944 (1983). Even if the Act were to appear salutary—or even exigent, given the intractable (and interminable) budget controversy—that fact cannot affect the Court's inquiry. *Id.* Though a court does not lightly resolve to invalidate a law of the United States, it must never-

theless vindicate the Constitution and the governmental framework it envisions. "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). Accordingly, the Supreme Court has "not hesitated to invalidate provisions of law which violate [the separation of powers]," *Metropolitan Wash. Airports Auth. v. Citizens for the Abatement of Airport Noise, Inc.*, 501 U.S. 252, 273 (1991), and this Court can do no less.

This case is indisputably one of first impression. The issue it poses will undoubtedly be finally resolved by the Supreme Court, but at present such Supreme Court precedent as can be found only intimates what the result will be. It is by that jurisprudence, however, that this Court must be guided, and the lesson of those cases appears to be that not even the most beguiling of upgrades to the machinery of national government will be countenanced unless it comports with the constitutional design.

Shorn of its political and policy-laden implications, this case turns on the narrow and subtle question of whether the President's power under the Act is simply a present-day enlargement of his historically sanctioned impoundment power as it has existed from time to time, as defendants urge, or rather a radical transfer of the legislative power to repeal statutory law, as plaintiffs believe. As explained below, the Court agrees with plaintiffs that, even if Congress may sometimes delegate authority to impound funds, it may not confer the power permanently to rescind an appropriation or tax benefit that has become the law of the United States. That power is possessed by Congress alone, and, according to the Framers' careful design, may not be delegated at all.

The Presentment Clause

The Presentment Clause requires that any bill making or changing federal law must be first passed by both Houses of Congress and then presented to the President *in toto*, in which form he acts upon it, either to make it (or allow it to become) a law, or to return it to Congress for reconsideration.[10] U.S.

---

[10] In the Framers' words:

> Every Bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President of the United States; If he approve it he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its return, in which Case it shall not become a Law.

U.S. Const. art. I, § 7, cl. 2.

At the behest of James Madison, the Framers included the following clause to ensure that Congress could not evade the presentment requirement simply by passing legislation in forms other than bills:

> Every Order, Resolution, or Vote to Which the Concurrence of the Senate and House of Representatives may be

Const. art. I, § 7, cl. 2. Plaintiffs focus on the language of "approval;" the President's primary duty under the Presentment Clause, they say, is one of approval or disapproval. If he approves of the bill, *in toto*, his signature is but a ministerial formality. If he does not approve of it, *in toto*, his duty obliges him to return it with his "objections" to the House in which it originated, or at least to leave it be. If he signs it while disapproving of it—or parts of it—as the Act purports to authorize him to do, then he does so, according to plaintiffs, in violation of the Presentment Clause.

For defendants, the operative words are, "he shall sign it." It is the bright-line act of signing alone that converts a bill into law. Approval is a highly subjective, and a temporal, concept. A President may "approve" of a bill for many reasons, not all of which import enthusiasm for its legislative consequences. A President may sign a bill of which he actually disapproves (as undoubtedly many Presidents have done) for political, diplomatic, or other purposes unrelated to his judgment of its merit.

The Court agrees with defendants that the act of signing a bill is the critical requirement of the Presentment Clause. The President's judgment of approval coincides with his decision to sign a bill; it has no independent operative significance. Whether a

---

> necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives according to the Rules and Limitations prescribed in the Case of a Bill.

U.S. Const. art I, § 7, cl. 3.

bill is or is not a law of the United States cannot depend on the President's state of mind when he affixes his signature. He may object to various appropriations and limited tax benefits—that is, he may *disapprove* of them—but nevertheless sign a bill and thereby remain in full compliance with the Presentment Clause. Likewise, no subsequent action by the President is capable of retroactively undermining the approval he registered with his signature. By that time the Article I approval process has run its course, and the bill indisputably has become a law of the United States. *See United States v. Will*, 449 U.S. 200, 224-25 & n.29 (1980); *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 454 (1899); *Burgess v. Salmon*, 97 U.S. 381, 384-85 (1878).

Yet, although the Court agrees that statutes subject to cancellation will have been "approved" in accordance with the Presentment Clause, the Act is vulnerable to the additional charge that, following approval, a cancellation by the President is a legislative repeal that itself must comply with Presentment Clause procedures. The Court must resolve this issue in light of the Supreme Court's admonishment that "[t]he legislative steps outlined in Art. I are not empty formalities; they were designed to assure that both Houses of Congress and the President participate in the exercise of lawmaking authority." *Chadha*, 462 U.S. at 958 n.22. It is insufficient, therefore, for defendants to argue that, notwithstanding the resemblance between a cancellation and a statutory repeal, the Act should stand because the same result could be accomplished through clearly constitutional means. Rather, "the purposes underlying the Presentment Clause . . . must guide resolution of

the question whether a given procedure is constitutional." *Id.* at 946.

Fundamentally, the Presentment Clause enforces "bicameralism" and circumscribes the President's ability to act unilaterally. *See Field v. Clark*, 143 U.S. 649, 692-93 (1892). It embodies "the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure." *Chadha*, 462 U.S. at 951. The President's contribution to the process is his approval of (or objection to) legislation as Congress presents it to him. His is merely a qualified check on the will of the legislature. *See* 1 *The Records of the Federal Convention of 1787* at 97-105 (Max Farrand ed., 1987). The President must consider the whole of the bill presented, which, in today's world of omnibus appropriations and myriad riders, is an undeniably difficult task. Nevertheless, upon considering a bill, he must reach a final judgment: either "approve it," or "not." U.S. Const. art I. § 7, cl. 2. Once he has by his signature transformed the whole bill into a law of the United States, the President's sole duty is to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. *See also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("[T]he President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.").

Where the President signs a bill but then purports to cancel parts of it, he exceeds his constitutional authority and prevents both Houses of Congress from participating in the exercise of lawmaking authority. The President's cancellation of an item unilaterally effects a repeal of statutory law such that the bill he signed is not the law that will govern the Nation.

That is precisely what the Presentment Clause was designed to prevent.

Delegation of Spending Authority vs. Exercise of Lawmaking Power

Defendants dismiss the notion that the Act represents an abdication of Congress' Article lawmaking I power, arguing that it merely ratifies traditional impoundment authority of the President in a novel form. Defendants and *amici* both allude to a long history of presidential impoundments, many of which have been tested by courts, and as to which the issue has been confined primarily to whether Congress intended to delegate discretion to the President not to spend money it had appropriated; that is, whether its appropriations were permissive or mandatory. *See, e.g., Train v. City of New York*, 420 U.S. 35, 41 (1975); *City of New Haven v. United States*, 634 F. Supp. 1449, 1454 n.6 (D.D.C. 1986) (citing cases), *aff'd* 809 F.2d 900 (D.C. Cir. 1987). The effect of the ICA was to make all appropriations presumptively mandatory. The Line Item Veto Act merely reverses that presumption, at least for a period of five days. During that limited period, the President has the option to "cancel" any appropriation—he may not change it in any manner—after which it remains in the law as he signed it, to be faithfully executed with the remainder.[11] If he cancels it with an appropriate message to Congress, it is extinguished, as if it had never been part of the bill, unless Congress revives it with a new bill, passed like any other by both Houses of Congress

---

[11] Defendants cite no analog, as a species of impoundment or anything else, however, to the power to "cancel" limited tax benefits found in the Act.

and presented anew to the President. In the meantime no money can be spent for it, just as would have been the case had it been "deferred" or "rescinded" in accordance with the ICA. The Line Item Veto Act is, therefore, according to defendants, merely an advance delegation by Congress to the President of a brief period of discretion to spend or not, as his judgment dictates, subject to the broad injunctions that his decision not to spend operate to reduce the deficit, and will not impair any essential Government functions or harm the national interest. It is, they say, "evolutionary, not revolutionary," Def. Motion for Summary Judgment at 3, in the perpetual contest of will between Congress and the President in matters of the federal budget.

It has long been held that Congress may—indeed, of necessity, must—delegate vast authority to the Executive Branch of government to make and to change rules for the governance of national affairs, so long as they are in furtherance of the will of Congress. When courts have inquired into whether Congress has abdicated its legislative function in cases of allegedly overbroad delegations, their sole concern is whether Congess itself articulated "intelligible principles" by which delegated authority is to be exercised. *See Mistretta v. United States*, 488 U.S. 361, 372; *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406, 409 (1928). Since 1935, the Supreme Court has "upheld, without exception, delegations under standards phrased in sweeping terms." *Loving v. United States*, 116 S. Ct. 1737, 1750 (1996). Defendants are therefore correct that, if the Act's conferral of cancellation power, at least with respect to appropriations, can be equated with a delegation of impoundment authority, their burden under the delegation

standard is not "a tough one." *National Fed'n of Fed. Employees v. United States*, 905 F.2d 400, 404 (D.C. Cir. 1990).[12]

But defendants are mistaken in asserting that Article I concerns disappear once the President has signed a bill into law, and, consequently, that the delegation doctrine is the only hurdle for them to surmount. Their analysis assumes that Congress conferred a delegable power. It did not; it ceded basic legislative authority. The Constitution vests "all legislative Powers" of the United States in Congress, U.S. Const. art. I, § 1, including the power to repeal. *Chadha*, 462 U.S. at 954. As *Chadha* made clear, there are formal aspects of the legislative process that Congress may not alter. Just as Congress could not delegate to one of its chambers the power to veto select provisions of law, it may not assign that authority to the President. Before the question of a delegation's excessiveness ever arises, then, a court must be convinced that Congress did not attempt to alienate one of its basic functions.

In no case where the Supreme Court decided that a delegation of broad authority was saved by Congress' articulation of intelligible principles was the Court faced with an equivalent of the cancellation power given to the President by the Line Item Veto Act. Cancellation under the Act is simply not the same thing as impoundment, or any other suspension of a

---

[12] *See, e.g., Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 219 (1989) (upholding delegation of authority to establish and collect pipeline safety fees); *Lichter v. United States*, 334 U.S. 742, 778 (1948) (upholding grant of power to recover excessive wartime profits); and *Yakus v. United States*, 321 U.S. 414, 424 (1944) (upholding broad delegation of price-fixing authority).

statutory provision. Instead, cancellation is equivalent to repeal[13]—and "repeal of statutes, no less than enactment, must conform with Art. I." *Chadha*, 462 U.S. at 954. Cancellation forever renders a provision of federal law without legal force or effect, so the President who canceled an item and his successors must turn to Congress to reauthorize the foregone spending. Whereas delegated authority to impound is exercised from time to time, in light of changed circumstances or shifting executive (or legislative) priorities, cancellation occurs immediately and irreversibly in the wake of the operationalizing "approval" of the bill containing the very same measures being rescinded.

Thus the cancellation power conferred by the Act is indeed revolutionary, as plaintiffs assert. Never before has Congress attempted to give away the power to shape the content of a statute of the United States, as the Act purports to do. As expansive as its delegations of power may have been in the past, none has gone so far as to transfer the function of repealing a provision of statutory law. The power to "make" the laws of the nation is the exclusive, nondelegable power of Congress which the Line Item Veto purports to alienate in part for eight years. That it can be recaptured if Congress repeals the Act, or suspends it (either in general, or in particular circumstances) does not alter the fact that, until Congress does so by a separate bill which the

---

[13] As noted *supra*, p.4, § 691e(4) of the Act defines the verb "cancel" as meaning "to rescind." *Webster's Third New International Dictionary* 1924 (G.&C. Merriam Co. 1981) defines the verb "repeal" as meaning "1: to rescind or revoke (as a sentence or law) from operation or effect."

President signs (or as to which his veto is overridden), the President has become a co-maker of the Nation's laws. The duty of the President with respect to such laws is to "take care that [they] be faithfully executed." U.S. Const. art II, § 3. Canceling, *i.e.*, repealing, parts of a law cannot be considered its faithful execution.[14]

Moreover, if cancellation power could constitutionally be delegated as to appropriations and limited tax benefits, defendants have yet to show a tenable constitutional distinction between appropriation and tax laws, on the one hand, and all other laws, on the other. In fact, defendants deny any obligation to suggest such a distinction at all. At oral argument they insisted that there is virtually no limit to the express Article I powers Congress may delegate if it chooses, so long as it articulates "intelligible principles" by which its delegee is to be guided. If that is so—if Congress can delegate to the President the power to reconfigure an appropriations or tax benefit bill—why can he not also cancel provisions of an environmental protection or civil rights law he disfavors, and upon exactly the same "principles" as are to guide his exercise of cancellation authority under the Line Item Veto Act?

As authority for the proposition that it is constitutionally permissible for Congress to delegate to the President the power to render a law of the United

---

[14] Defendants suggest that, in canceling future appropriations, the President will, in fact, be faithfully executing the Line Item Veto Act to reduce the deficit. But the Act contains no mandate to the President to reduce the deficit. It merely conditions cancellations for whatever reason upon, *inter alia*, their having a deficit-reducing effect.

States inoperable, defendants cite the case of *Field v. Clark*, 143 U.S. 649 (1892). Aside from the fact that the presidential action approved by the Supreme Court in *Field v. Clark* was merely the "suspension" of duly enacted tariffs, not their cancellation, the case is also distinguishable on the ground that the Supreme Court recognized the practice of "legislating in contingency;" that is, where Congress itself determines in advance when conditions yet to occur should cause the law to cease to be operative. The President is merely the instrument of its will. *Id.* at 683-92. *See also United States v. Rock Royal Co-op, Inc.*, 307 U.S. 533, 577-78 (1939); *Currin v. Wallace*, 306 U.S. 1, 15-16 (1939); *The Brig Aurora*, 11 U.S. (7 Cranch) 382, 388 (1813).[15] The Line Item Veto Act, in contrast, hands off to the President authority over fundamental legislative choices. Indeed, that is its reason for being. It spares Congress the burden of making those vexing choices of which programs to

---

[15] As the Supreme Court further explained in *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 407 (1928), 30 years later:

> Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be affected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district.

preserve and which to cut. Thus, by placing on itself the "onus" of overriding the President's cancellations, *see* H.R. Conf. Rep. No. 491, 104th Cong., 2d Sess. at 16 (1996), Congress has turned the constitutional division of responsibilities for legislating on its head.

The Court therefore agrees with plaintiffs. In those Supreme Court cases which this Court finds most instructive for its purposes, most notably *Chadha*, the Supreme Court has repeatedly counseled that when the Constitution speaks to the matter, the Constitution alone controls the way in which governmental powers shall be exercised.[16] The formalities of the constitutional framework must be respected; the several estates subject to it must function within the spheres the Constitution allots to them.

IV.

In passing the Act, Congress and the President addressed the significant problem of runaway spending, striving to create a more efficient process. But "the Framers ranked other values higher than efficiency." *Chadha*, 462 U.S. at 959. As the Court elaborated:

> With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

---

[16] *See also Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991); *Bowsher v. Synar*, 478 U.S. 714 (1986); *cf. U.S. Term Limits v. Thornton*, 115 S. Ct. 1842 (1995).

Id. Various legislative alternatives remain available to give the President a more significant role in restraining government spending. For example, the "expedited rescission" model favored by many Members of the 104th Congress would retain the President's role as a recommender of rescissions, *see* U.S. Const. art. II, § 3, and force Congress to vote on such proposals. And, of course, Congress remains free to attempt passage of a constitutional amendment if it determines that the President should have unilateral revisionary power.

For the foregoing reasons, it is, this *10th* day of April, 1997,

ORDERED, that defendants' motion to dismiss the complaint and motion for summary judgment are denied; and it is

FURTHER ORDERED, that plaintiffs' motion for summary judgment is granted; and it is

FURTHER ORDERED, that the Line Item Veto Act, Pub. Law No. 104-130, 110 Stat. 1200 (1996), is adjudged and declared unconstitutional.

/s/ THOMAS PENFIELD JACKSON
THOMAS PENFIELD JACKSON
U.S. District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 97-0001 (TPJ)

SENATOR ROBERT C. BYRD, ET AL.,
PLAINTIFFS

v.

FRANKLIN D. RAINES, DIRECTOR, OFFICE OF
MANAGEMENT AND BUDGET, ET AL., DEFENDANTS

[Filed: Apr. 11, 1997]

NOTICE OF APPEAL

Franklin D. Raines, Director, Office of Management and Budget, and Robert E. Rubin, Secretary of the Treasury, defendants, appeal to the United States Supreme Court from the Memorandum and Order issued by this Court on April 10, 1997.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

ERIC H. HOLDER, JR.,
United States Attorney

GARY G. GRINDLER
Deputy Assistant Attorney
General

DAVID J. ANDERSON
/s/ NEIL H. KOSLOWE
NEIL H. KOSLOWE
Special Litigation Counsel
D.C. Bar No. 361792
/s/ ADAM ISSENBERG
ADAM ISSENBERG
Trial Attorney
Civil Division-Room 1036
Department of Justice
P. O. Box 883
Washington, D.C. 20044
Telephone: (202) 514-3418
Attorneys for Defendants

APPENDIX C

Public Law 104-130, 104th Congress

An Act

To give the President line item veto authority with respect to appropriations, new direct spending, and limited tax benefits

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Line Item Veto Act".

SEC. 2. LINE ITEM VETO AUTHORITY.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.) is amended by adding at the end the following new part:

"PART C—LINE ITEM VETO

"LINE ITEM VETO AUTHORITY

"SEC. 1021. (a) IN GENERAL.—Notwithstanding the provisions of parts A and B, and subject to the provisions of this part, the President may, with respect to any bill or joint resolution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States, cancel in whole—

"(1) any dollar amount of discretionary budget authority;

"(2) any item of new direct spending; or

"(3) any limited tax benefit;

if the President—

"(A) determines that such cancellation will—

"(i) reduce the Federal budget deficit;

"(ii) not impair any essential Government functions; and

"(iii) not harm the national interest; and

"(B) notifies the Congress of such cancellation by transmitting a special message, in accordance with section 1022, within five calendar days (excluding Sundays) after the enactment of the law providing the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.

"(b) IDENTIFICATION OF CANCELLATIONS.—In identifying dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits for cancellation, the President shall—

"(1) consider the legislative history, construction, and purposes of the law which contains such dollar amounts, items, or benefits;

"(2) consider any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information; and

"(3) use the definitions contained in section 1026 in applying this part to the specific provisions of such law.

"(c) EXCEPTION FOR DISAPPROVAL BILLS.—The authority granted by subsection (a) shall not apply to any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any law that is a disapproval bill as defined in section 1026.

"SPECIAL MESSAGES

"SEC. 1022. (a) IN GENERAL.—For each law from which a cancellation has been made under this part, the President shall transmit a single special message to the Congress.

"(b) CONTENTS.—

"(1) The special message shall specify—

"(A) the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit which has been canceled, and provide a corresponding reference number for each cancellation;

"(B) the determinations required under section 1021(a), together with any supporting material;

"(C) the reasons for the cancellation;

"(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the cancellation;

"(E) all facts, circumstances and considerations relating to or bearing upon the cancellation, and to the maximum extent practicable, the estimated effect of the cancellation upon

the objects, purposes and programs for which the canceled authority was provided; and

"(F) include the adjustments that will be made pursuant to section 1024 to the discretionary spending limits under section 601 and an evaluation of the effects of those adjustments upon the sequestration procedures of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(2) In the case of a cancellation of any dollar amount of discretionary budget authority or item of new direct spending, the special message shall also include, if applicable—

"(A) any account, department, or establishment of the Government for which such budget authority was to have been available for obligation and the specific project or governmental functions involved;

"(B) the specific States and congressional districts, if any, affected by the cancellation; and

"(C) the total number of cancellations imposed during the current session of Congress of States and congressional districts identified in subparagraph (B).

"(c) TRANSMISSION OF SPECIAL MESSAGES TO HOUSE AND SENATE.—

"(1) The President shall transmit to the Congress each special message under this part within five calendar days (excluding Sundays)

after enactment of the law to which the cancellation applies. Each special message shall be transmitted to the House of Representatives and the Senate on the same calendar day. Such special message shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session.

"(2) Any special message transmitted under this part shall be printed in the first issue of the Federal Register published after such transmittal.

"CANCELLATION EFFECTIVE UNLESS DISAPPROVED

"SEC. 1023. (a) IN GENERAL.—The cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect upon receipt in the House of Representatives and the Senate of the special message notifying the Congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law shall be null and void and any such dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall be effective as of the original date provided in the law to which the cancellation applied.

"(b) COMMENSURATE REDUCTIONS IN DISCRETIONARY BUDGET AUTHORITY.—Upon the cancellation of a dollar amount of discretionary budget authority under subsection (a), the total appropriation for each relevant account of which that dollar amount is a part

shall be simultaneously reduced by the dollar amount of that cancellation.

"DEFICIT REDUCTION

"SEC. 1024. (a) IN GENERAL.—

"(1) DISCRETIONARY BUDGET AUTHORITY.—OMB shall, for each dollar amount of discretionary budget authority and for each item of new direct spending canceled from an appropriation law under section 1021(a)—

"(A) reflect the reduction that results from such cancellation in the estimates required by section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 in accordance with the Act, including an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear; and

"(B) include a reduction to the discretionary spending limits for budget authority and outlays in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 for each applicable fiscal year set forth in section 601(a)(2) by amounts equal to the amounts for each fiscal year estimated pursuant to subparagraph (A).

"(2) DIRECT SPENDING AND LIMITED TAX BENEFITS.—(A) OMB shall, for each item of new direct spending or limited tax benefit canceled from a law under secton 1021(a), estimate the deficit decrease caused by the cancellation of such

item or benefit in that law and include such estimate as a separate entry in the report prepared pursuant to section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(B) OMB shall not include any change in the deficit resulting from a cancellation of any item of new direct spending or limited tax benefit, or the enactment of a disapproval bill for any such cancellation, under this part in the estimates and reports required by sections 252(b) and 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) ADJUSTMENTS TO SPENDING LIMITS.—After ten calendar days (excluding Sundays) after the expiration of the time period in section 1025(b)(1) for expedited congressional consideration of a disapproval bill for a special message containing a cancellation of discretionary budget authority, OMB shall make the reduction included in subsection (a)(1)(B) as part of the next sequester report required by section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(c) EXCEPTION.—Subsection (b) shall not apply to a cancellation if a disapproval bill or other law that disapproves that cancellation is enacted into law prior to 10 calendar days (excluding Sundays) after the expiration of the time period set forth in section 1025(b)(1).

"(d) CONGRESSIONAL BUDGET OFFICE ESTIMATES.—As soon as practicable after the President makes a cancellation from a law under section 1021(a), the Director of the Congressional Budget Office shall provide the Committees on the Budget of the House of

Representatives and the Senate with an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear.

"EXPEDITED CONGRESSIONAL CONSIDERATION OF DISAPPROVAL BILLS

"SEC. 1025. (a) RECEIPT AND REFERRAL OF SPECIAL MESSAGE.—Each special message transmitted under this part shall be referred to the Committee on the Budget and the appropriate committee or committees of the Senate and the Committee on the Budget and the appropriate committee or committees of the House of Representatives. Each such message shall be printed as a document of the House of Representatives.

"(b) TIME PERIOD FOR EXPEDITED PROCEDURES.—

"(1) There shall be a congressional review period of 30 calendar days of session, beginning on the first calendar day of session after the date on which the special message is received in the House of Representatives and the Senate, during which the procedures contained in this section shall apply to both Houses of Congress.

"(2) In the House of Representatives the procedures set forth in this section shall not apply after the end of the period described in paragraph (1).

"(3) If Congress adjourns at the end of a Congress prior to the expiration of the period described in paragraph (1) and a disapproval bill was then pending in either House of Congress or a committee thereof (including a conference com-

mittee of the two Houses of Congress), or was pending before the President, a disapproval bill for the same special message may be introduced within the first five calendar days of session of the next Congress and shall be treated as a disapproval bill under this part, and the time period described in paragraph (1) shall commence on the day of introduction of that disapproval bill.

"(c) INTRODUCTION OF DISAPPROVAL BILLS.—(1) In order for a disapproval bill to be considered under the procedures set forth in this section, the bill must meet the definition of a disapproval bill and must be introduced no later than the fifth calendar day of session following the beginning of the period described in subsection (b)(1).

"(2) In the case of a disapproval bill introduced in the House of Representatives, such bill shall include in the first blank space referred to in section 1026(6)(C) a list of the reference numbers for all cancellations made by the President in the special message to which such disapproval bill relates.

"(d) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—(1) Any committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill, except that such a motion may not be made after the committee has reported a disapproval bill with respect to the same special message. A motion to discharge may be made only by a Member favoring the bill (but

only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

"(2) After a disapproval bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order, except any Member if sup-

ported by 49 other Members (a quorum being present) may offer an amendment striking the reference number or numbers of a cancellation or cancellations from the bill. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

"(3) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a disapproval bill shall be decided without debate.

"(4) It shall not be in order to consider under this subsection more than one disapproval bill for the same special message except for consideration of a similar Senate bill (unless the House has already rejected a disapproval bill for the same special message) or more than one motion to discharge described in paragraph (1) with respect to a disapproval bill for that special message.

"(e) CONSIDERATION IN THE SENATE.—

"(1) REFERRAL AND REPORTING.—Any disapproval bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a disapproval bill has

been referred shall report the bill not later than the seventh day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the Calendar.

"(2) DISAPPROVAL BILL FROM HOUSE.—When the Senate receives from the House of Representatives a disapproval bill, such bill shall not be referred to committee and shall be placed on the Calendar.

"(3) CONSIDERATION OF SINGLE DISAPPROVAL BILL.—After the Senate has proceeded to the consideration of a disapproval bill for a special message, then no other disapproval bill originating in that same House relating to that same message shall be subject to the procedures set forth in this subsection.

"(4) AMENDMENTS.—

"(A) AMENDMENTS IN ORDER.—The only amendments in order to a disapproval bill are—

"(i) an amendment that strikes the reference number of a cancellation from the disapproval bill; and

"(ii) an amendment that only inserts the reference number of a cancellation included in the special message to which the disapproval bill relates that is not already contained in such bill.

"(B) WAIVER OR APPEAL.—An affirmative vote of three-fifths of the Senators, duly chosen and sworn, shall be required in the Senate—

"(i) to waive or suspend this paragraph; or

"(ii) to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

"(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of a disapproval bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

"(6) LIMIT ON CONSIDERATION.—(A) After no more than 10 hours of consideration of a disapproval bill, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or to table.

"(B) A single motion to extend the time for consideration under subparagraph (A) for no more than an additional five hours is in order prior to the expiration of such time and shall be decided without debate.

"(C) The time for debate on the disapproval bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.

"(7) DEBATE ON AMENDMENTS.—Debate on any amendment to a disapproval bill shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

"(8) NO MOTION TO RECOMMIT.—A motion to recommit a disapproval bill shall not be in order.

"(9) DISPOSITION OF SENATE DISAPPROVAL BILL.—If the Senate has read for the third time a disapproval bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a disapproval bill for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate disapproval bill, agree to the Senate amendment, and vote on final disposition of the House disapproval bill, all without any intervening action or debate.

"(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a

disapproval bill shall be limited to not more than four hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.

"(f) CONSIDERATION IN CONFERENCE.—

"(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

"(2) HOUSE CONSIDERATION.—(A) Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to a disapproval bill provided such report has been available for one calendar day (excluding Saturdays, Sundays, or legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.

"(B) Debate in the House of Representatives on the conference report and any amendments in disagreement on any disapproval bill shall each be limited to not more than one hour equally divided

and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

"(3) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on a disapproval bill shall be limited to not more than four hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

"(4) LIMITS ON SCOPE.—(A) When a disagreement to an amendment in the nature of a substitute has been referred to a conference, the conferees shall report those cancellations that were included in both the bill and the amendment, and may report a cancellation included in either the bill or the amendment, but shall not include any other matter.

"(B) When a disagreement on an amendment or amendments of one House to the disapproval bill of the other House has been referred to a committee of conference, the conferees shall report those cancellations upon which both Houses agree and may report any or all of those cancellations upon which there is disagreement, but shall not include any other matter.

"DEFINITIONS

"SEC. 1026. As used in this part:

"(1) APPROPRIATION LAW.—The term 'appropriation law' means an Act referred to in section 105 of title 1, United States Code, including any general or special appropriation Act, or any Act making supplemental, deficiency, or continuing appropriations, that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States.

"(2) CALENDAR DAY.—The term 'calendar day' means a standard 24-hour period beginning a midnight.

"(3) CALENDAR DAYS OF SESSION.—The term 'calendar days of session' shall mean only those days on which both Houses of Congress are in session.

"(4) CANCEL.—The term 'cancel' or 'cancellation' means—

"(A) with respect to any dollar amount of discretionary budget authority, to rescind;

"(B) with respect to any item of new direct spending—

"(i) that is budget authority provided by law (other than an appropriation law), to prevent such budget authority from having legal force or effect;

"(ii) that is entitlement authority, to prevent the specific legal obligation of the United States from having legal force or effect; or

"(iii) through the food stamp program, to prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect; and

"(C) with respect to a limited tax benefit, to prevent the specific provision of law that provides such benefit from having legal force of effect.

"(5) DIRECT SPENDING.—The term 'direct spending' means—

"(A) budget authority provided by law (other than an appropriation law);

"(B) entitlement authority; and

"(C) the food stamp program.

"(6) DISAPPROVAL BILL.—The term 'disapproval bill' means a bill or joint resolution which only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of new direct spending, or limited tax benefits in a special message transmitted by the President under this part and—

"(A) the title of which is as follows: 'A bill disapproving the cancellations transmitted by the President on ____, the blank space being filled in with the date of transmission of the relevant special message and the public law number to which the message relates;

"(B) which does not have a preamble; and

"(C) which provides only the following after the enacting clause: 'That Congress disapproves of

cancellations ___', the blank space being filled in with a list by reference number of one or more cancellations contained in the President's special message, 'as transmitted by the President in a special message on __', the blank space being filled in with the appropriate date, 'regarding ___.', the blank space being filled in with the public law number to which the special message relates.

"(7) DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY.—(A) Except as provided in subparagraph (B), the term 'dollar amount of discretionary budget authority' means the entire dollar amount of budget authority—

"(i) specified in an appropriation law, or the entire dollar amount of budget authority required to be allocated by a specific proviso in a appropriation law for which a specific dollar figure was not included;

"(ii) represented separately in any table, chart, of explanatory text included in the statement of managers or the governing committee report accompanying such law;

"(iii) required to be allocated for a specific program, project, or activity in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law;

"(iv) represented by the product of the estimated procurement cost and the total quantity of items specified in an appropriation law or included

in the statement of managers or the governing committee report accompanying such law; and

"(v) represented by the product of the estimated procurement cost and the total quantity of items required to be provided in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law.

"(B) The term 'dollar amount of discretionary budget authority' does not include—

"(i) direct spending;

"(ii) budget authority in an appropriation law which funds direct spending provided for in other law;

"(iii) any existing budget authority rescinded or canceled in an appropriation law; or

"(iv) any restriction, condition, or limitation in an appropriation law or the accompanying statement of managers or committee reports on the expenditure of budget authority for an account, program, project, or activity, or on activities involving such expenditure.

"(8) ITEM OF NEW DIRECT SPENDING.—The term 'item of new direct spending' means any specific provision of law that is estimated to result in an increase in budget authority or outlays for direct spending relative to the most recent levels calculated pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(9) LIMITED TAX BENEFIT.—(A) The term 'limited tax benefit' means-

"(i) any revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; and

"(ii) any Federal tax provision which provides temporary or permanent transitional relief for 10 or fewer beneficiaries in any fiscal year from a change to the Internal Revenue Code of 1986.

"(B) A provision shall not be treated as described in subparagraph (A)(i) if the effect of that provision is that—

"(i) all persons in the same industry or engaged in the same type of activity receive the same treatment;

"(ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment; or

"(iii) any difference in the treatment of persons is based solely on—

"(I) in the case of businesses and associations, the size or form of the business or association involved;

"(II) in the case of individuals, general demographic conditions, such as income, marital status, number of dependents, or tax return filing status;

"(III) the amount involved; or

"(IV) a generally-available election under the Internal Revenue Code of 1986.

"(C) A provision shall not be treated as described in subparagraph (A)(ii) if—

"(i) it provides for the retention of prior law with respect to all binding contracts or other legally enforceable obligations in existence on a date contemporaneous with congressional action specifying such date; or

"(ii) it is a technical correction to previously enacted legislation that is estimated to have no revenue effect.

"(D) For purposes of subparagraph (A)—

"(i) all businesses and associations which are related within the meaning of sections 707(b) and 1563(a) of the Internal Revenue Code of 1986 shall be treated as a single beneficiary;

"(ii) all qualified plans of an employer shall be treated as a single beneficiary;

"(iii) all holders of the same bond issue shall be treated as a single beneficiary; and

"(iv) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision.

"(E) For purposes of this paragraph, the term 'revenue-losing provision' means any provision which results in a reduction in Federal tax revenues for any one of the two following periods—

"(i) the first fiscal year for which the provision is effective; or

"(ii) the period of the 5 fiscal years beginning with the first fiscal year for which the provisions is effective.

"(F) The terms used in this paragraph shall have the same meaning as those terms have generally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

"(10) OMB.—The term 'OMB' means the Director of the Office of Management and Budget.

"IDENTIFICATION OF LIMITED TAX BENEFITS

"SEC. 1027. (a) STATEMENT BY JOINT TAX COMMITTEE.—The Joint Committee on Taxation shall review any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 that is being prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill or joint resolution contains any limited tax benefits. The Joint Committee on Taxation shall provide to the committee of conference a statement identifying and such limited tax benefits or declaring that the bill or joint resolution does not contain any limited tax benefits. Any such statement shall be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

"(b) STATEMENT INCLUDED IN LEGISLATION.—(1) Notwithstanding any other rule of the House of Representatives or any rule or precedent of the Senate, any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 reported by a committee of conference of the two Houses may include, as a separate section of such bill or joint resolution, the information contained in the statement of the Joint Committee on Taxation, but only in the manner set forth in paragraph (2)

"(2) The separate section permitted under paragraph (1) shall read as follows: 'Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall ____ apply to ____.', with the blank spaces being filled in with—

"(A) in any case in which the Joint Committee on Taxation identifies limited tax benefits in the statement required under subsection (a), the word 'only' in the first blank space and a list of all of the specific provisions of the bill or joint resolution identified by the Joint Committee on Taxation in such statement in the second blank space; or

"(B) in any case in which the Joint Committee on Taxation declares that there are no limited tax benefits in the statement required under subsection (a), the word 'not' in the first blank space and the phrase 'any provision of this Act' in the second blank space.

"(c) PRESIDENT'S AUTHORITY.—If any revenue or reconciliation bill or joint resolution is signed into

law pursuant to Article I, section 7, of the Constitution of the United States—

"(1) with a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) only to cancel any limited tax benefit in that law, if any, identified in such separate section; or

"(2) without a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) to cancel any limited tax benefit in that law that meets the definition in section 1026.

"(d) CONGRESSIONAL IDENTIFICATION OF LIMITED TAX BENEFITS.—There shall be no judicial review of the congressional identification under subsection (a) and (b) of a limited tax benefit in a conference report.".

SEC. 3. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress or any individual adversely affected by part C of title X of the Congressional Budget and Impoundment Control Act of 1974 may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this part violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each

House of Congress shall have the right to intervene in such action.

(3) Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

SEC. 4. CONFORMING AMENDMENTS.

(a) SHORT TITLES.—Section 1(a) of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking "and" before "title X" and inserting a period;

(2) inserting "Parts A and B of" before "title X"; and

(3) inserting at the end the following new sentence: "Part C of title X may be cited as the 'Line Item Veto Act of 1996'.".

(b) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end the following:

"PART C-LINE ITEM VETO

"Sec. 1021. Line item veto authority.
"Sec. 1022. Special messages.
"Sec. 1023. Cancellation effective unless disapproved.
"Sec. 1024. Deficit reduction.
"Sec. 1025. Expedited congressional consideration of disapproval bills.
"Sec. 1026. Definitions.
"Sec. 1027. Identification of limited tax benefits.".

(c) EXERCISE OF RULEMAKING POWERS.—Section 904(a) of the Congressional Budget Act of 1974 is amended by striking "and 1017" and inserting ", 1017, 1025, and 1027".

SEC. 5. EFFECTIVE DATES.

This Act and the amendments made by it shall take effect and apply to measures enacted on the earlier of—

(1) the day after the enactment into law, pursuant to Article I, section 7, of the Constitu-

tion of the United States, of an Act entitled "An Act to provide for a seven-year plan for deficit reduction and achieve a balanced Federal budget."; or

(2) January 1, 1997;

and shall have no force or effect on or after January 1, 2005.

Approved April 9, 1996.